15-271

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 957.

JAMES H. SIMMONS, APPELLANT,

vs.

JOSEPH OGLE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 6, 1881.

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1 *Placita.*

Pleas in the circuit court of the United States of America, for the southern district of Illinois, held at the city of Springfield in said district, before the Hon. Samuel H. Treat, district judge of said district, and in the absence of the Hon. Thomas Drummond, judge of the seventh judicial circuit, pro tempore, sole judge of said court, on Thursday, the 14th day of April, at the January term of said court in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and fifth year.

J. A. JONES, *Clerk.*

JOSEPH OGLE
vs. } In chancery.
JAMES H. SIMMONS.

2 SOUTHERN DISTRICT OF ILLINOIS, *ss*:

Be it remembered, that heretofore, to wit, on the 30th day of May, in the year of our Lord one thousand eight hundred and seventy-nine, came the defendant in the above-entitled cause by his solicitors and filed in the office of the clerk of said court, a transcript of the record of said cause, from the circuit court of St. Clair County, Illinois, which said transcript is in the words and figures following, to wit:

Transcript from State court.

STATE OF ILLINOIS,
St. Clair County, ss:

At a regular term of the circuit court within and for the county of St. Clair and State of Illinois, begun and held at the court-house, in the city of Belleville, in said county of St. Clair, on Monday, the 21st day of April, A. D. 1879, it being the third Monday of April, A.
D. 1879, according to the act of the general assembly, by the
3 Hon. William H. Snyder, one of the judges of the third judicial circuit of the State of Illinois, of which the said county of St. Clair forms a part, the said court sitting as a court of chancery, the following proceedings were had, to wit:

Present, honorable William H. Snyder, judge, Herman G. Weber, sheriff, George W. Brockhaus, State's attorney, Charles Becker, clerk.

Be it remembered that on the 3d day of March, 1879, the following bill for relief was filed, to wit:

A. *Bill for relief, and exhibits.*

STATE OF ILLINOIS,
St. Clair County, ss:

In the circuit court of St. Clair County, sitting in chancery, April term, A. D. 1879.

To the hon. judge of said court, in chancery sitting:

Humbly complaining, your orator, Joseph Ogle, of the county of St. Clair and State of Illinois, shews unto your honor that on the 30th day of Dec'r, A. D. 1835, one John Winstanly, then a resident of the

4 county of St. Clair, in the State of Illinois, made his application in the form required by regulations governing the local lands offices in the State of Illinois to the register of the United States land office at Edwardsville in said State of Illinois, to purchase from the United States the south half of the northeast quarter of section three, in township one north, of range nine west of the 3rd principal meridian, the said tract of land then being unsold and the property of the United States subject to sale, said application being in the words and figures, following:

"No. 13164.] LAND OFFICE, *Edwardsville, Dec'r* 30, 1835.

"I, John Winstanly, of St. Clair County, Illinois, do hereby apply for the purchase of the south half of the northeast quarter, section three, township one north, range No. nine west of the third principal meridian, containing eighty-four acres and $\frac{46}{100}$ acres, according to the returns of the surveyor-general, for which I agree with the register to give at the rate of $1.25 per acre.

"JOHN WINSTANLY."

Your orator alieges that said application was then and there filed amongst the archives of the said land office, and so remained
5 filed until long after the 13th day of June, A. D. 1871, and remains still so filed up to the filing of this bill, unless abstracted or removed without the knowledge or consent of your orator. Your orator further alleges that there is attached to the said application the following official declaration or act of the then register of the U. S. land office at said Edwardsville office.

I, Samuel H. Thompson, register of the land office at Edwardsville, do hereby certify that the lot above described contains eighty-four $\frac{46}{100}$ acres as mentioned, and that the price agreed upon is $1.75 cents per acre.

SAMUEL H. THOMPSON,
Register.

Your orator further shows unto your honor that the said tract of land then being subject to sale by the United States, it was then purchased and paid for by the said John Winstanly, for the price and sum of $1.25 cents per acre, and that said fact is evidenced by an entry on the official records of said office in the book of records known as the tract book, made in the words and figures following: "30th Dec'r, 1835, S. ½ NE. 3, 1 N., 9 W.;" acres, $85\frac{17}{100}$; "to whom sold," John Winstanly, St. Clair County, Illinois, Dec'r 30, 1835. That by law it was made the
6 duty of the said register of the land office to give to the said John Winstanly a duplicate certificate of his said purchase, and it was the duty of the said register, in a book in his office, the evidence of such certificate having been issued; your orator alleges that in the official records of said land office, in the book of register certificates of sale of public lands, is made the following entry: "No. of certificate, 13164;" "name," John Winstanly, St. Clair County, Illinois; "description of tract purchased," S. ½, NE. 3, 1 N., 9; quantity, $84\frac{46}{100}$; "amount of purchase money," $105.87. Your orator further shows unto your honor that it was the duty of the said land officers to inscribe upon the said subdivision of land so purchased upon the township plat thereof, the number of the said final certificates corresponding with the number of such entry of land. Your orator further shows that in compliance with said

requirement of law or instructions of the General Land Office in the execution of the law for sale of the public lands, the said officers at the time of such sale, in'cribed upon said subdivision of land in the said
7 township plat, to wit, the S. ½, N. E. 3, T. 1, R. 9; the following figures "13164," which remained so in'cribed until the year 1871, when they were erased by parties to this complainant unknown.

Your orator alleges and declares that the acts of official character herein described, were matters of public record in said land office, open to the inspection of all persons, and gave notice to James H. Simmons, who is made defendant to this bill, that the said John Winstanly had purchased and paid for the said land on the 30th of Dec'r, 1835, and that, in consequence of said purchase and payment, he, the said John Winstanly, or his assignee, were seized of an equitable right in said land, to have and *have and* from the United States the legal title in form by a patent. And that the United States, through its Land Department, could not again legally or equitably sell said tract of land to another, having already sold the same to John Winstanly. Your orator charges that, in accordance with law, the original certificate of entry, No. 13164, was deposited by the land officers at Edwardsville, in the General Land Office at Washington, and, as he is informed
8 and believes, a duplicate register certificate, as required by law, was, by said land officers given to the said John Winstanly at the time of his purchase of said land. Your orator further shows unto your honor, that the said John Winstanly, on the 25th day of March, A. D. 1837, conveyed said tract of land, by a good and sufficient deed of conveyance, to one William C. Anderson, a certified copy of which deed is filed herewith, marked Exhibit A; that the said William C. Anderson & wife made and executed a mortgage upon said S. ½, N. E. qr. 3, T. 1 N., 9 W., under date of the first day of April, 1838, to the president, directors, and company of the Commercial Bank of Cincinnati, the same being a corporation in the city of Cincinnati, to secure a large sum of money, a certified copy of which mortgage is herewith filed as Exhibit B, and prayed to be taken and referred to as part of this bill on the hearing. And afterwards such proceedings were had in the circuit court of St. Clair County, Illinois, in chancery, upon an application of the president, directors and co. of the said bank, or their trustees, that at the Sept. term, A. D. 1848, of said court, a decree was
9 rendered for the sale of said tract of land upon the foreclosure of the mortgage aforesaid. And, upon such decree, William C. Kinney, master in chancery of said court, sold said tract of land in obedience to such decree, and the same was by said master sold to and by him, by deed dated 7th March, 1849, conveyed to Jacob Strader and Joseph Smith, acting trustees for the Commercial Bank of Cincinnat*ti*, a copy of which deed is herewith filed, marked Exhibit C, as part of this bill.

Your orator further shows unto your honor, that for a good and valuable consideration, paid by your orator, the said acting trustees of the Commercial Bank of Cincinnat*ti*, on the 21st day of July, A. D. 1851, sold and conveyed the said tract of land, by their deed duly executed and delivered to your orator Joseph Ogle, which deed, is here into court brought as evidence thereof, which conveyance vested the title so above acquired by John Winstanly from the United States in your orator, whereby he became and is entitled to have the legal title in form from the U. S., and is entitled to demand that any subsequent pretended purchaser of said land from the U. S., and having received a patent
10 therefor shall be decreed to convey to your orator the legal title

so wrongfully rec'ev'd by him against the equitable rights of your orator.

Your orator further shows unto your honor that about the year A. D. 1856, he, as such purchaser of said land, took possession of said south half of the northeast quarter of section three, township one north, of range three west, as he lawfully might do, and enclosed portions thereof, and since then and prior to the year A. D. 1871, has erected valuable improvements thereon, and has retained the possession thereof ever since, until evicted therefrom by a judgment of the circuit court of the United States for the southern district of Illinois, upon suit brought by the said Simmons, upon the strict legal title, as evidenced by a patent issued by the General Land Office, dated the 12th day of June, A. D. 1871, as hereinafter more particularly set out. Your orator further alle*d*ges that he has paid all taxes levied against said land since the year 1851. But now so it is, may it please the court, one James H. Simmons, a resident of the city of Philadelphia, in the year A. D. 1871, was allowed to purchase the said land a second time from the United States, at the land office located at Springfield, Illinois, which office was the successor of the Edwardsville land office, and as such was in possession of all the records open to the
11 inspection of the said James H. Simmons, which are heretofore set out in this bill, showing that the said land had been sold to John Winstanly in the year 1835, and the General Land Office, upon such subsequent pretended purchase by Simmons, issued a patent to him, dated June 12, A. D. 1871, a*n*e attested official copy of which is herewith filed, marked Exhibit D, and made part of this bill. Your orator further shows that at the date of the said pretended purchase by said Simmons he, your orator, was in the actual, visible, notorious adverse possession of said land, and cultivated the same under and in virtue of his title as aforestated.

Your orator understands and believes that it is falsely and fraudulently pretended by the said James H. Simmons that the said John Winstanly did not purchase the said S. ½ N. E. qr. sec. 3, T. 1 N., R. 9 W., from the United States on the 30th Dec., A. D. 1835, or at any time prior to the pretended purchase of the said Simmons; but on the contrary, that the said John Winstanly, on the said 30th day of December, A. D. 1835, purchased from the United States the west half of the northwest quarter of section nine, in township two north, of range nine west, and that the said purshase-money of $105 87 cents paid into the land office on said 30th Dec'r, 1835, was in consideration for the said last-mentioned land, whereas your orator distinctly charges that the said W. ½ N. W. qr. 9, T. 2 N., R. 9 W. contains but eighty acres, the purchase-money for which was but $100, whilst the S. ½ N. E. ¾,
12 1 N., 9 W. contains eighty-four $\frac{40}{100}$ acres, the purchase-money for which was the sum of $105, amount of money credited as paid upon the land office books, for the land sold to John Winstanly on the 30th Dec'r, 1835. Your orator further shows unto your honor, and distinctly charges the fact to be that the United States sold the west half of the N. W. qr. sec. 9, T. 2 N., R. 9 W. to one Ninian Edwards, on the 8th day of May, A. D. 1817, and that the said Ninian Edwards assigned his said certificate of purchase to one William Schlatter of Philadelphia, as is evidenced by duplicate patent certificate No. 498 herewith filed as Exhibit lettered E) which certificate issued from the Edwardsville land office, Sept'r 24, 1822, which fact was of record in the land office at Springfield, *upon* said pretended entry of Simmons was made, and there was in addition thereto marked upon the subdi-

vision of land W ½ N. W. 9, 2 N., 9 W. upon said township plat, the same being a record of said office, the letters "A. P." signifying "applied and paid," the usual method of designating lands disposed of by the United States under the credit system, the said plat being open to the inspection of said Simmons when he made his said pretended purchase.

Your orator further shows unto your honor that the United States did, through the General Land Office, issue to William Schlatter a patent for said W. ½ NW., 9, 2 N., 9 W., dated Aug't 15, 1871. Your orator further alle*d*ges and shows that on the 12th day of June, 1871, the Land Office at Washington was in possession of duplicate or
13 original patent certificate 498, transmitted from the Springfield land office June 8th, 1871, and that consequently the patent to said Simmons ought not to have issued under the false and fraudulent pretence that the said John Winstanly had purchased the W. ½ NW. 9, 2 N., 9 W., on Dec'r 30, 1835. An attested copy U. S. patent to William Schlatter is herewith filed as Exhibit F, and made part of this his bill, dated Aug't 13, 1871.

Now, may it please your honor, your orator shows that within seven years after the issuing of said patent to James H. Simmons, he, said Simmons, proceeded against your orator, and his tenants in possession under him of said land, in ejectment, and that such proceedings were had therein in the circuit court of the United States for the southern district of Illinois that at the January term, A. D. 1878, of said circuit court, a judgment was rendered by default against your orator for the recovery of said land. Your orator alle*d*ges as an excuse for not defending said suit that he was advised by counsel, learned in the law, that his equitable defense would not avail him in a United States court against the government patent issued to James H. Simmons, and that his only remedy was in a court of equity, where matters of this kind are properly cognizable.

Your orator further shows that the said James H. Simmons has, since the rendering of said judgment, by a deputy U. S. marshal*l*, attempted to enforce said judgment by a pretended eviction of your
14 orator by procuring his tenants to attorn to said Jas. H. Simmons as their landlord, which actings, judgment, and eviction are against equity and good conscience, and to the manifest prejudice of your orator.

Your orator further alleges and declares that the said James H. Simmons is a merchant residing in the city of Philadelphia and never was familiar with the public lands in Illinois, and more particularly those in the county of St. Clair; that after the public lands of Illinois were disposed of, as supposed, and the land officers theretofore located in this State were reduced to one, located at Springfield, the said James H. Simmons, conspiring and colluding with some person to your orator unknown, but in the service of the government in the General Land Office at Washington, has been allowed to enter many tracts of land in said State besides the said S. ½ NE. 3, T. 1 N., 9 W., which had theretofore been sold by the U. S. under the frivolous pretext that such sales were informally made by the officers of the United States or that some mistake was made by such officers in their public records of such sales.

Your orator further shows unto your honor that he understands and believes that information as to the supposed mistake or error of said John Winstanly in supposing that he had purchased or entered from the United States the said S. ½ NE. qr. sec. 3, T. 1 N., R. 9 W., was fur-

nished to him, said James H. Simmons, by some clerk or officer
15 of the General Land Office, and that he made the said purchase or pretended entry in 1871 *whereby* as a speculative venture, the land officers at Springfield disregarding the public records of said land office showing the equitable rights of John Winstanly, and of your orator as his assignee, by deraignment of title to demand the legal title in form from the United States, as afore stated, in virtue of his superior equity.

Your orator distinctly charges that the said pretended sale by the land officers at Springfield and purchase by Jas. H. Simmons in the year 1871, of the said S. ½ NE. qr. sec. 3, T. 1 N., R. 9 W., upon which said patent was so issued to said Simmons, was in fraud of the rights of your orator, and is unjust and inequitable, and void from the beginning, and that the said James H. Simmons holds the legal title by patent in trust for your orator, who is the rightful own'r of the said land, and that his seeking to get possession thereof, or getting possession of the same and receiving the rents and profits thereof, is against equity and good conscience and the rights of your orator.

Your orator further shows unto your honor that the duplicate certificate of the land office at Edwardsville, No. 13161, so issued to the said John Winstanly on the 30th day of December, A. D. 1835, has been lost or mislaid, so that your orator cannot find the same upon diligent search and inquiry; that the same was never in his power, possession, *or power*, or under his control; that he has made diligent but unavailing search there-
for, having searched amongst the remaining papers of said John
16 Winstanly in the possession of his son, Thomas Winstanly, of St. Clair County, Illinois, and having in person visited William C. Anderson of St. Louis, who is in possession of the papers of his late father, William C. Anderson, to whom the said John Winstanly conveyed the said land, and who is now deceased, and having visited the city of Cincinnatti and the surviving trustees of the Commercial Bank of Cincinnatti, in search for said duplicate certificate, from whom he bought said land; all of which searches and enquiries have not enabled him to find said duplicate certificate, which, as he supposes, must have been burned with other papers of said trust in a fire occurring in Cincinnat'i in the year , which, as he understands, destroyed many of the papers of said Commercial Bank of Cincinnat'i. Your orator is therefor' unable to produce such original duplicate certificate of entry to this court upon the hearing of this his complaint. In consideration of the premises, and as your orator has no adequate relief at law, he prays the people's writ of subpœne to be issued out of this court commanding the said James H. Simmons, whom he makes defendant to this bill, to appear in this court and make full and complete answer to the same and all special matters and allegations therein as though specially interrogated thereto, hereby waiving the answer of the said James H. Simmons under oath, and that upon the final hearing of this cause your
honor shall adjudge and decree that the said James H. Simmons
17 holds the strict legal title to the said land through said patent in trust for your orator, in whom the superior equity is vested, and that by a day to be named the said James H. Simmons shall be decreed to convey to your orator the said legal title, or in his default therein the master in chancery of this court shall convey the same to your orator, and that this court shall further decree that your orator shall be placed in possession of said land as owner thereof, entitled to the rents and profits as if no judgment of eviction had been rendered against him, and that the said Jas. H. Simmons shall pay to

your orator all rents and profits which he may receive out of said lands before the execution of the decree herein prayed for, and that the said Jas. H. Simmons shall be decreed to pay all costs in & about this suit and the said ejectment suit in the United States court by this complainant expended.

And that your honor will grant him such other and further general relief as his case may entitle himto and is consistent with equity and justice as though the same was specialy prayed for in this bill.

JOSEPH OGLE,
Complainant,
By J. L. D. MORISON &
J. B. HAY,
Sol's for Complainant.

STATE OF ILLINOIS,
St. Clair County, ss:

In the circuit court, to the April term thereof, A. D. 1879.

18 JOSEPH OGLE
vs.
JAMES H. SIMMONS. } Bill for relief.

The said Joseph L. Ogle, being duly sworn, upon his oath says that he is the complainant in the foregoing bill, and that, according to the best of his affiant's knowledge, information, and belief, the matters and things therein set forth are true in substance and in fact.

JOSEPH OGLE.

Subscribed & sworn to before me this March 3rd, 1879.
19 CHARLES BECKER, *Clk,*
By GEO. W. SCHUESSLER, *D'p'y.*

STATE OF ILLINOIS,
St. Clair County, ss:

In the circuit court, to the April term thereof, A. D. 1879.

JOSEPH OGLE
vs.
JAMES H. SIMMONS. } Bill for relief.

The said Joseph Ogle, being duly sworn, upon his oath says he is the complainant in the foregoing bill; that the said James H. Simmons, who is made a defendant therein, is not a resident of the State of Illinois, but that he, the said James H. Simmons, now resides in the city of Philadelphia in the State of Pennsylvania.

JOSEPH OGLE.

Subscribed and sworn to before me this 3rd day of March, 1879.
CHARLES BECKER, *Clerk,*
By GEO. W. SCHUESSLER, *D'p'y.*

Exhibit A to bill.

This deed made and entered into this twenty-fifth day of March, in the year of our Lord one thousand eight hundred and thirty-seven, be-

tween John Winstanley and Catharine, his wife, of the county of St. Clair and State of Illinois, of the first part, and William C. Anderson, of the county of St. Louis and State of Missouri, of the second part, witnesseth that the said John Winstanley and Catharine, his wife, parties of the first part, for and in consideration of the sum of nine hundred dollars, in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, convey, and confirm unto the said party of the second part, his heirs and assigns forever, the following-described piece or parcel of land, situate, lying, and being in the county of St. Clair and State of Illinois, and known and designated on the plat of said St. Clair County as being the south half of the northeast quarter, section number three, of township number one north, of range No. nine west, containing eighty-four and forty-six hundredths acres; together with all and singular the appurtenances thereunto belonging or in any wise appertaining: to have and to
20 hold the above-described tract or parcel of land unto the said party of the second part, his heirs and assigns, forever.

And the said John Winstanley and Catharine, his wife, the aforesaid tract or parcel of land and premises unto the said party of the second part, his heirs and assigns, against the claim or claims of all and every person whatsoever, do and will warrant and defend by these presents.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOHN WINSTANLEY. [SEAL.]
CATTA WINSTANLEY. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN HAY.

STATE OF ILLINOIS,
St. Clair County, ss:

Be it remembered that on this 25th day of March, A. D. one thousand eight hundred and thirty-seven, before me, John Hay, clerk of the circuit court for and within the said county of St. Clair, personally came John Winstanley and Catharine, his wife, personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as having executed the same, and severally acknowledged the same to be their free act and deed for the purposes therein expressed, the said Catharine Winstanley being by me first made acquainted with the contents thereof and examined seperately and
21 apart from her said husband whether she executed the said deed and relinquished her dower to the lands and tenements therein mentioned voluntarily, freely, and without compulsion of her husband, acknowledged and declared that she executed the said deed and relinquished her dower in the said lands and tenements therein mentioned voluntarily, freely, and without the compulsion of her said husband.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at my office in Belleville, the day and year above written.

[SEAL.] JOHN HAY.

Recorded this fifteenth of April, eighteen hundred and thirty-seven.
JOHN HAY, *Recorder.*

Copy certificate.

STATE OF ILLINOIS,
St. Clair County:

I, Charles Becker, clerk of the circuit court and ex-officio recorder, in and for said county of St. Clair and State of Illinois, do certify the foregoing to be a true and correct copy of warranty deed from John Winstanley and wife to William C. Anderson as the same appears of record in my office in book I, page 312, of said St. Clair County records, and I further certify that I am the custodian of said records.

In testimony whereof I hereunto set my hand and affix the seal
22 of said court at office, in Belleville, Illinois, this 15th day of February, A. D. 1878.

[SEAL.] CHARLES BECKER, *Clerk.*

Exhibit "B" to bill.

This indenture made and concluded this first day of April, in the year of our Lord 1838, between William C. Anderson and Eliza M., his wife, of the city of St. Louis and State of Missouri, of the first part, and the "president, directors, and company of the Commercial Bank of Cincinnatti," of the city of Cincinnatti and State of Ohio, of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of twenty-five thousand dollars, to them in hand paid by the said party of the second part before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, as by these presents they do grant, bargain, and sell, unto the said party of the second part and their assigns, the following-described real estate, to wit: First, a lot or piece of ground situate and being in North St. Louis, in the said county of St. Louis, State of Missouri, containing eighty feet front by one hundred and forty feet in depth, be the same more or less, bounded on the east by the Mississippi River, on the south by Madison street, on the north by lot No. eleven (11), and on the west by Front street, it being lot No. ten (10), and the same lot conveyed by Charles R. Anderson to said

William C. Anderson, by deed bearing date 31st March in the
23 year 1838; secondly, a certain other lot or piece of ground situate in the said county of St. Louis, in the addition to the said city of St. Louis made by Thomas Riddle, William C. Carr, and others, containing about forty-two feet three inches, more or less, front by one hundred and twenty-seven feet in the rear; bounded on the south by the line dividing the property of said William C. Carr and Edward Cole, east by a fifteen-foot alley, north by lot of William W. Greene, and on the west by Sixth street, it being the same lot on which said William C. Anderson has erected a dwelling-house and office-houses, and on which he now resides, and conveyed to him by said William C. Carr and wife by deed bearing date 20th May, 1836; thirdly, the undivided half of a certain tract of land situate and being in the county of St. Clair, in the State of Illinois, designated on the general plat of said county of St. Clair as being the northeast quarter of section No. 35, in township No. 2 north, of range No. 9 west, containing in the whole one hundred and sixty acres; fourthly, a certain other tract of land situate and being in said county of St. Clair and State of Illinois known and designated on the said plat of said county of St. Clair as being the south half of the northeast quarter of section No. 3, of township No. 1 north, of range No. 9 west, containing eighty-four and forty-six

hundredths acres, the two tracts of land last described being the same purchased by said William C. Anderson from John Winstanley and
24 wife by deed bearing date 25th March, 1837; to have and to hold the aforesaid lots of ground and tracts of land, together with all and singular the buildings, privileges, and appurtenances thereunto in any wise belonging, unto them the said party of the second, and their heirs and assigns, forever.

And the said William C. Anderson and Eliza M., his wife, do hereby covena't and agree with the said party of the second part that they will warrant and forever defend the title of the aforesaid lots of ground and tracts of land unto them, the said party of the second part, and their assigns. This deed is made upon this condition, and upon no other: That whereas the said William C. Anderson has this day executed his five certain promissory notes, all bearing even date with these presents, to wit, one note for the sum of three thousand dollars, payable twelve months from the date, with six per cent. interest thereon from date until paid; one other note for the sum of three thousand dollars, payable eighteen months from the date, with six per cent. interest thereon from date until paid; one other note for the sum of four thousand dollars, payable in two years from the date, with interest thereon until paid as aforesaid; one other note for the sum of five thousand dollars, payable two years and six months from date, with interest thereon as aforesaid until paid; and one other note for the sum of seven thousand nine hundred and ninety-one dollars fifty-two cents, payable in three years from the date, with interest thereon as aforesaid
25 until paid. Now, if the said William C. Anderson shall well and truly pay each one of said promissory notes, which are all drawn in favor of said party of the second part or their order, as they respectively become due and payable, according to the tenor and effect of each note, to the said party of the second part or their assigns, then the estate herein and hereby conveyed shall cease and determine, and nothing hereby pass, anything to the contrary thereof herein contained notwithstanding.

In testimony whereof the said party of the first part have hereunto set their hands and affixed their seals at the city of St. Louis, in the State of Missouri, the day and date first above written.

WM. C. ANDERSON. [SEAL.]
ELIZ. M. ANDERSON. [SEAL.]

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this fourth day of April, in the year of our Lord eighteen hundred and thirty-eight, before me, a justice of the peace within and for the county aforesaid, appeared William C. Anderson and Eliza M. Anderson, his wife, who are personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned.
26 She, the said Eliza M., being made acquainted with the contents of said conveyance, acknowledged, on an examination apart from her husband, that she executed the same and without compulsion or undue influence of her husband.

Taken and certified the day and year aforesaid.

P. WALSH, *Justice.*

STATE OF MISSOURI,
County of St. Louis, ss:

Be it remembered that on this third day of April, eighteen hundred and forty, before me, the undersigned, clerk of the circuit court within and for the county aforesaid, came William C. Anderson and Eliza M., his wife, who are both known to me to be the real person, whose names are subscribed to the instrument of writing hereto attached, as parties thereto, and severally acknowledged the same to be their act and deed, hands and seals for the purposes therein expressed.

She, the said Eliza M. Anderson, being by me first made acquainted with the contents of said conveyance, acknowledged and declared, on an examination separate and apart from her husband, that she executed the same freely and voluntarily and relinquishes her dower to the real estate therein conveyed without any compulsion or undue influence of her said husband.

27 In testimony whereof I have hereunto set my hand and affixed the seal of said court at office, in the city of St. Louis, this day and year last aforesaid.

[SEAL.] JNO. RULAND, *Clerk.*

Recorded this eleventh of April, eighteen hundred and forty.
JOHN HAY, *Recorder.*

Copy certificate.

STATE OF ILLINOIS,
St. Clair County:

I, Charles Becker, clerk of the circuit court and ex-officio recorder in and for said county of St. Clair and State of Illinois, do certify the foregoing to be a true and correct copy of mortgage from William C. Anderson and wife to the president, directors, and company of the Commercial Bank of Cincinnatti, as the same appears of record in my office in book A of mortgages, page 27, of said St. Clair County records; and I further certify that I am the custodian of said records.

In testimony whereof I hereunto set my hand and affix the seal of said court, at office, in Belleville, Illinois, this 15th day of February, A. D. 1878.

[SEAL.] CHARLES BECKER, *Clerk.*

Exhibit C to bill.

This deed, made this seventh day of March, in the year of our
28 Lord one thousand eight hundred and forty-nine, between William C. Kinney, master in chancery for the county of St. Clair, in the State of Illinois, commissioner, appointed for that purpose by virtue of a decree of the circuit court within and for the said county of St. Clair, State of Illinois, in chancery sitting, made at the September term thereof, A. D. 1848, and hereinafter set out, of the first part, and Jacob Strader and Joseph Smith, acting trustees of the Commercial Bank of Cincinnatti, of the second part, witnesseth:

That whereas at the September term of the circuit court within and for the county of St. Clair, State of Illinois, in the year of our Lord one thousand eight hundred and forty-eight, said court sitting as a court of chancery upon the bill of complaint of Jacob Strader, Robert Buchanan, and others, complainants, and against William C. Anderson, a decree was made in conformity with the prayer of said bill, which decree is words and figures following, to wit:

JACOB STRADER & others
vs.
WILLIAM C. ANDERSON. } Bill to foreclose.

The defendants having failed to answer, pl'ad, or demur to complainant's bill, in compliance with the rule of the court entered against him on a former day of the term, it is now ordered by the court that the said bill be taken for confessed, and it is, with the exhibits thereto, refe'red to the master to ascertain the amount due upon the mort-
29 gage in the bill refer'ed to and exhibit thereunto. And the master thereupon files his report, thereby showing that there is due and unpaid upon said mortgage in princip*le* and interest the sum of twenty-seven thousand six hundred and twenty-six dollars and nine cents, which report is accepted by the court; and it is thereupon ordered, adjudged, and decreed by the court, that the said defendant pay to the complainants the said sum of twenty-seven thousand six hundred and twenty-six dollars and nine cents, with interest thereon at the rate of six per cent. per annum from date until paid, and also the costs and charges of this suit, and that if default be made in the payment of said sum of money and of the interest to accru' thereon as aforesaid, and of the costs and charges, or of either or of any part thereof, within sixty days from the date hereof, the said defendant, and all persons holding by, through, or under him, be forever fre*o*rd and foreclosed of all right, title, interest, and estate of, in, and to the lands and tenements in said bill of complaint and mortgage mentioned and described, to wit, the undivided half of a certain tract of land situate and being in the county of St. Clair in the State of Illinois, designated as being the northeast quarter of sec. 35, in town. 2 north, range 9 west, containing 160 acres; also, a certain other tract of land situate and being in the said county of St. Clair, designated as being the
30 south half of the northeast quarter of sec. 3, town. 1 north, range nine west, containing 84 $\frac{46}{100}$ acres, and that the said premises be sold by William C. Kinney, master in chancery, at public vendue to the highest bidder for ready money, at the door of the court-house in the town of Belleville, the master giving, previous to the sale, six weeks' notice thereof by publication in some newspaper published in the said town of Belleville. And it is further ordered, adjudged, and decreed by the court that the sale, upon payment of the purchase-money, the said master in chancery ma*de*, execute, and deliver to the purchaser or purchasers a deed or deeds for the premises by him or them bought, thereby granting and conveying unto such purchaser or purchasers, and to his or their heirs or assigns, all the right, title, interest, and estate which the said defendants had in and to the said premises at the time of executing the said mortgage deed, and that out of the proceeds of such sale he pay first the costs and charges attending said sale and of this writ, and then to the complainants the said sum of twenty-seven thousand six hundred and twenty-six dollars and nine cents, with interest thereon as aforesaid.

And it is ordered that the master report his proceedings herein to the court at the next term thereof, & that this case be continued.

And whereas the said William C. Kinney, master in chancery
31 and commissioner as aforesaid, by virtue of and in compliance with the said decree, did, on the 24th day of February, A. D. 1849, proceed to sell the said mortgaged premises for ready money to the highest bidder at public auction, at the court-house door, in the town of Belleville, after having given public notice of such sale by advertise-

ment for six weeks in the Belleville Advocate, a newspaper published in the town of Belleville, before the day of sale; and whereas at such sale Jacob Strader and Joseph Smith, trustees of the Commercial Bank of Cincinnatti, bid the sum of eight hundred dollars for the undermentioned half of the northeast quarter of sec. 35, town. 2 north, range nine west, containing 160 acres, and also bid seven hundred dollars for the south half of the northeast quarter of sec. three, town. one north, range nine west, containing $84\frac{46}{100}$ acres, being the tracts of land contained and described in said mortgage and decree: Now, therefore, the said William C. Kinney, master in chancery and commissioner as aforesaid, for and in consideration of said sum of fifteen hundred dollars to me in hand paid, the receipt of which is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said Jacob Strader and Joseph Smith, trustees of the Commercial Bank of Cincinnatti, certain tracts of land lying and being in the county of St. Clair, State of Illinois, and designated as
32 the undivided half of the northeast qr. of section 35, town. 2 north, r. 9 west, containing 160 acres; also the south half of the NE. quarter, sec. 3, town. one north, range 9 west, containing $84\frac{46}{100}$ acres—to have and to hold unto them, the said Jacob Strader and Joseph Smith, trustees of the Commercial Bank of Cincinnatti and to their assigns forever.

In testimony whereof the said William C. Kinney, master in chancery and commissioner aforesaid, has hereunto affixed his name and seal the day and year first above written.

WILLIAM C. KINNEY, [SEAL.]
Master in Chancery and Commissioner.

STATE OF ILLINOIS,
County of St. Clair, set:

I, Theodore Engelman, clerk of the circuit court within and for the county of St. Clair and State of Illinois, hereby certify that William C. Kinney, whose name is signed to the foregoing instrument of writing as having executed the same, is personally known to me to be the real person who executed the same, and that he appeared before me and acknowledged the said instrument to be his act and deed for the purpose therein mentioned.

In testimony whereof I have hereunto signed my hand and affixed the seal of said court at office this seventh day of March, A. D.
33 one thousand eight hundred and forty-nine.

[SEAL.] THEOD. ENGELMEN.

Recorded April 17th, A. D. 1849.

RICHARD HAY, *Recorder.*

Copy of certificate.

STATE OF ILLINOIS,
St. Clair County:

I, Charles Becker, clerk of the circuit court and ex-officio recorder in and for said county of St. Clair and State of Illinois, do certify the foregoing to be a true and correct copy of master's deed from Wm. C. Kinney, master, &c., to Jacob Strader and Joseph Smith, trustees of the Commercial Bank of Cincinnatti, as the same appears of record in my office in book U, page 488, of said St. Clair County records. And I further certify that I am the custodian of said records.

In testimony whereof I hereunto set my hand and affix the seal of

said court at office, in Belleville, Illinois, this 15th day of February, A. D. 1878.

[SEAL.] CHARLES BECKER, *Clerk.*

Exhibit D to bill.

The United States of America to all to Whom these presents shall come, greeting:

34 *Certificate No.* 29596.

Whereas James H. Simmons, of Philadelphia County, Pennsylvania, has deposited in the General Land Office of the United States a certificate of the register of the land office at Springfield, Illinois, whereby it appears that full payment has been made by the said James H. Simmons, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provisions for the sale of the public lands" for the south half of the northeast quarter of section three, in township one north, of range nine west of the third principal meridian, in the district of lands subject to sale at Springfield, Illinois, containing eighty-four acres and forty-six hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said James H. Simmons:

Now, know ye that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said James H. Simmons and to his heirs, the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appur-
35 tenances of whatsoever nature thereunto belonging, unto the said James H. Simmons and to his heirs and assigns forever.

In testimony whereof I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twelfth day of June, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-fifth.

By the President:

U. S. GRANT,
By J. PARRISH, *Secretary.*
C. B. BOYNTON,
Recorder of the General Land Office.

Recorded vol. 57, page 433.

N. 20101.] [J. A. D.

B.] DEPARTMENT OF THE INTERIOR, [S. W. C.
Special.] GENERAL LAND OFFICE,
Washington, D. C., February 16, 1878.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed copy of patent in favor of James H. Simmons, founded on Springfield, Illinois, cash entry No. 29596, is a true and literal exemplification from the record in this office.

In testimony whereof I have hereunto subscribed my name

36 and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] J. A. WILLIAMSON,
Commissioner of General Land Office.

EXHIBIT E TO BILL.

No. 498.] *Final certificate.* [Ex'd.

Where duplicate part of the tract has been relinquished (under the act of Congress of 2d March, 1821.)

No. .] LAND OFFICE AT EDWARDSVILLE, ILLINOIS,
Sept. 24th, 1822.

It is hereby certified that pursuant to several acts of Congress providing for the sale of lands of the United States, Ninian Edwards, of Randolph County, Illinois, on the eighth day of May, 1817, purchased of the register of the land office at Edwardsville the lot or northwest quarter-section No. 9, in township No. 2 N. of range No. 9 W., of the 3d P. M. district, containing one hundred and sixty acres, at the rate of two dollars and cents per acre; and that to complete the payment of said lot or NW. ¼ section, William Schlatter, assignee of Ninian Edwards, by his att'y, James Clemens, jr., has availed himself of the relief granted by the act of Congress passed on the 2d day of March, 1821, entitled "An act for the relief of the purchasers of the public lands prior to the 1st day of July, 1820." His account for said
37 lot or northwest quarter-section has, therefore, been finally settled and closed in thebooks of this office, as will appear from the following *settled* thereof.

	Dollars.	Cents.		Dollars.	Cents.
DR.			CR.		
1817.			1817.		
May 8. NW. ¼ sec. 9, 2 N., 9 W., 160 acres, at $2.	$320	00	May 8. By cash, $16.....		
			June 17. " " 64.....	80	00
			1822.		
Issue patent for W. ½ NW. ¼ 9, 2 N., 9 W. LIPPINCOTT.			Sept. 24. By cash transferred from NE. ¼ 2 N., 9 W.	80	00
			Sept. 24. By E. ½ NW. ¼ 9, 2 N., 9 W. Relinq'd per relinq'r No. 369.	160	00
Transmit patent to Alfred D. Chandler, 14 Devonshire st., Boston, Mass., as per accompanying affidavit. LIPPINCOTT.					
	$320			$320	

Now, therefore, be it known, that on presenting this certificate to the Commissioner of the General Land Office, William Schlatter, assignee of Ninian Edwards, shall he entitled to receive a patent for the lot or W. ½ NW. ¼ section above described.

Springfield, Ills., June 8th, 1871.

Pat. Aug. 15th, 1871. Rec. vol. 9, page 244, ex.

WM. F. ELKING,
Register of the Land Office.

N. 20101.] [J. A. D.

B.] DEPARTMENT OF THE INTERIOR, [S. W. C.
Special.] GENERAL LAND OFFICE,
Washington, D. C., February 16, 1878.

I, J. A. Williamson, Commissioner of the General Land Office,
38 do hereby certify that the annexed copy of Edwardsville, Illinois, (duplicate) final certificate No. 498, in favor of William Schlatter, assignee of Ninian Edwards, is a true and literal exemplification of the same on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] J. A. WILLIAMSON,
Commissioner of General Land Office.

Exhibit F to bill.

Final certificate, No. 498.

The United States of America to all to whom these presents shall come, greeting:

Know ye that William Schlatter, assignee of Ninian Edwards, having deposited in the general land office at Edwardsville, Illinois, whereby it appears that full payment has been made for the west half of the northwest quarter of section nine, in township two north, of range nine west, in the district of lands formerly subject to sale at Edwardsville, now Springfield, Illinois, containing eighty acres of the lands directed to be sold at Edwardsville, Illinois, by the act of Congress entitled "An act providing for the sale of the lands of the United
39 States in the territory northwest of the Ohio, and above the mouth of the Kentucky River," and of the acts amendatory of the same, there is granted by the United States unto the said William Schlatter the tract of land above described; to have and to hold the said tract of land, with the appurtenances, unto the said William Schlatter, and to his heirs and assigns forever.

In testimony whereof I have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington the fifteenth day of August, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States of America the ninety-sixth.

By the President:

[L. S.] U. S. GRANT,
By J. PARRISH, *Sec'y.*
C. B. BOYNTON,
Recorder of the General Land Office.

Rec. vol. 9, page 244.

N. 20101.] [J. A. D.

B.] DEPARTMENT OF THE INTERIOR, [S. W. C.
Special.] GENERAL LAND OFFICE,
Washington, D. C., February 16, 1878.

40 I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed copy of patent in favor of William Schlatter, founded on Edwardsville, Illinois, final certificate

No. 498, is a true and literal exemplification from the record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] J. A. WILLIAMSON,
Commissioner of General Land Office.

Be it remembered that on the 3d day of March, 1879, the following summons was issued, to wit:

B. *Summons.*

STATE OF ILLINOIS,
St. Clair County, set:

The people of the State of Illinois to the sheriff of St. Clair County, greeting:

We command you to summon James H. Simmons, if he can be found in your county, to be and appear in the St. Clair County circuit court on the first day of the next term thereof, to be holden at the
41 court-house in the city of Belleville, in said county of St. Clair, on the third Monday of April, 1879, then and there in said court in chancery sitting, to answer the bill of complaint exhibited against him by Joseph Ogle for relief, and not to fail, under penalty of what the law directs. And this writ you shall have at our said court with your return endorsed thereon.

Witness: Charles Becker, clerk of the circuit court, and the seal thereof hereunto affixed, at office, this 3d day of March, A. D. one thousand eight hundred and seventy-nine.

[SEAL.] CHAS. BECKER, *Clerk*,
By GEO. N. STOLBERG, *Deputy.*

(Endorsement on back of summons:) Returned, the within-named def't not found in my county, March 17th, 1879, as I am therein commanded.

H. G. WEBER, *Sheriff*,
By BEN. BONEAU, *D'p'y.*

Be it remembered that on the 8th day of March, 1879, the following certificate of clerk was filed, to wit:

C. *Clerk's certificate of service of notice.*

STATE OF ILLINOIS,
St. Clair County, ss:

In the circuit court, April term, 1879.

42 JOSEPH OGLE
vs.
JAMES H. SIMMONS. } Bill for relief.

I, Charles Becker, clerk of the circuit court within and for said county and State aforesaid, hereby certify that on the 8th day of March,

A. D. 1879, in pursuance of the statute in such case made and provided, and within ten days of the first publication of the notice in this cause, I mailed a copy of said notice to the following-named defendant, whose place of residence is stated in the affidavit of non-residence in the above-entitled cause, to wit:

To James H. Simmons, to Philadelphia, Pennsylvania.

Witness my hand and the seal of said court hereto affixed, this 8th day of March, A. D. 1879.

[SEAL.]

CHAS. BECKER, *Clerk*,
By GEO. H. STOLBERG, *D'p'y.*

Be it remembered that on the 23d day of April, 1879, the following certificate of publication was filed, to wit:

43 D. *Certificate of publication.*

STATE OF ILLINOIS,
St. Clair County, ss:

In the circuit court of said county, April term, A. D. 1879.

JOSEPH OGLE
vs.
JAMES H. SIMMONS. } Bill in chancery. For relief.

Affidavit of the non-residence of James H. Simmons, the above-named defendant, having been filed in the clerk's office of the circuit court of said county, notice is therefore hereby given to the said non-resident defendant that the complainant filed his bill of complaint in said court, on the chancery side thereof, on the 3d day of March, 1879, and that thereupon a summons issued out of said court, wherein said suit is now pending, returnable on the third Monday in the month of April, 1879, as is by law required. Now, unless you, the said non-resident defendant above-named, shall personally be and appear before said circuit court, on the first day of the next term thereof, to be holden at Belleville, in and for the said county, on the third Monday in April, 1879, and plead, answer, or demur to the said complainant's bill of complaint, the same and the matters and things therein charged
44 and stated will be taken as confessed, and a decree entered against you according to the prayer of said bill.

CHARLES BECKER, *Clerk.*

Belleville, Illinois, March 3, 1879.

J. L. D. HARRISON & JOHN B. HAY,
Compl't's Sol's.

STATE OF ILLINOIS,
St. Clair County, City of Belleville, ss:

The undersigned publishers of the Belleville Advocate, a public newspaper printed in the city, county, and State aforesaid, do hereby certify that a notice of which the annexed is a true copy has been regularly published in said paper six times in succession, commencing on the 7th day of March, 1879, and ending on the 11th day of April, 1879.

Given under our hands and seal, at Belleville aforesaid, this 22' day of April, 1879.

Printer's fees, $7.50.

[SEAL.]

WESTERN PRINTING COMPANY,
F. M. TAYLOR, *Pres't.*

Be it remembered that on the 25th day of April, 1879, the following petition to remove cause on ground of citizenship was filed, to wit:

E. *Petition for removal.*

PETITION.

45 Petition for removal of the ground of citizenship, under the act of March 3, 1875, where the adversary parties are all citizens of different States, and all the plaintiffs or all the defendants unite the petition for removal.

In the circuit court of St. Clair County, State of Illinois.

JOSEPH OGLE, PLAINTIFF *vs.* JAMES H. SIMMONS, DEFENDANT. } Petition for removal to the circuit court of the United States, district of .

To the honorable, the circuit court of St. Clair County, State of Illinois:

Your petitioner respectfully show' to this honorable court that the matter and amount in dispute in the above-entitled suit exceeds, exclusive of costs, the sum or value of five hundred dollars. That the controversy in said suit is between citizens of different States, and that the petitioner at the time of the commencement of this suit , and still is, a citizen of the State of Illinois, and that the said defendant then, and still is, a citizen of the State of Pennsylvania. And your petitioner offers herewith a good and sufficient surety for his entering in
46 said circuit court of the United States on the first day of its next session a copy of the records in this suit, and for paying all costs that may be awarded by said circuit court, if said court shall hold that this suit was wrongfully or improperly removed thereto.

And he prays this honorable court to proceed no further herein, except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States in and for the southern district of Illinois; and he will ever pray.

G. B. BURNETT,
Attorney for Petitioner.

STATE OF ILLINOIS,
County of St. Clair ss:

I, F. A. McConoughy, being duly sworn, do say that I am one of the attorneys for the petitioner in the above-entitled cause; that I have read the foregoing petition and know the contents therof, and that the statements and allegations therein contained are true, as I verily believe.

F. A. McCONOUGHY.

47 Subscribed by the said F. A. McConoughy in my presence *by* and by him sworn to before me, this 25th day of April, A. D. 1879.

CHARLES BECKER, *Cir. Clerk*,
By GEO. W. SCHUESSLER, *D'p'y.*

Be it remembered that on the 25th day of April, 1879, the following bond for removal of cause was filed, to wit:

F. *Bond for removal.*

BOND.

Bond to accompany for removal of a cause, under the act of March 2, 1867, as revised and embodied in the Revised Statutes of the United States.

Know all men by these presents that we, James H. Simmons as principal and Geo. B. Burnett as sureties, are held and firmly bound unto Joseph Ogle in the penal sum of five hundred dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

The condition of this obligation is such that if James H. Simmons shall enter and file, or cause to be entered and filed, in the next circuit of the United States in and for the southern district of Illinois, on
48 the first day of its session, copies of all process, leadings, depositions, testimony, and other proceedings in a certain suit or action now pending in the circuit court of the county of St. Clair and State of Illinois, in which Joseph Ogle is plaintiff and James H. Simmons is defendant, and shall do such other acts as by the act of Congress in that behalf are required to be done upon the removal of such suit from said State court into the said United States court, then this obligation to be void; otherwise of force.

Witness our hands and seals this 25th day of April, 1879.

JAMES H. SIMMONS. [SEAL.]
G. B. BURNETT, *His Att'y in Fact.*
GEORGE B. BURNETT. [SEAL.]

STATE OF MISSOURI,
County of St. Louis, City of St. Louis, ss:

I, George B. Burnett, of the county of Madison and State of Illinois, the surety named in the foregoing bond, being duly sworn, do depose and say that I am a resident of the State of Illinois, and a property-holder therein; that I am worth the sum of five hundred dollars
49 over and above all my debts and liabilities, and exclusive of property by law exempt from execution; that I have property in the State of Illinois liable to execution, of the value of more than five hundred dollars.

GEORGE B. BURNETT.

Subscribed in my presence by George B. Burnett, and by him sworn before me this 25th day of April, A. D. 1879. Term expires Feb. 5, 1883.

[SEAL.] JOSEPH P. VASTINE,
Notary Public, St. Louis City, Missouri.

Be it remembered that on the 28th day of April, 1879, the following motion to remove cause was filed, to wit:

G. *Motion to remove cause.*

In the circuit court, to April term, A. D. 1879.

STATE OF ILLINOIS,
St. Clair County, ss:

JOSEPH OGLE
vs.
JAMES H. SIMMONS. } In chancery. Bill for a conveyance.

And now, on this 1st Friday of the term, comes the said defendant and moves the court for removal of the said cause to the United States circuit court.

NOETLING & HALBERT,
GEO. B. BURNETT, &
T. A. McCONAUGHY,
Sol's for Def't.

50 H. *Order of removal.*

Be it remembered that at the April term, 1879, the following proceedings were had, to wit:

JOSEPH OGLE
vs.
JAMES H. SIMMONS. } Bill for relief.

On the 23d day of April, 1879, comes the complainant, by J. L. D. Morrison and John B. Hay, his solicitors, and proves by a copy of the notice which he files, duly certified by the publishers, that due notice has been given to the said defendant, James H. Simmons, of the pendency of this suit, by publication in the Belleville Advocate, a weekly newspaper published in said county of St. Clair, for six successive weeks, and at least forty days previous to the first day of the present term of this court, to which day the writ of summons is made returnable, the first insertion having been made on the 7th day of March, 1879, and the last insertion on the 11th day of April, 1879; and it appearing to the court that within ten days of the first publication of said notice the clerk of this court mailed a copy of the same to the defendant, James H. Simmons, at Philadelphia, Pennsylvania, the residence of
51 said James H. Simmons, as stated in the affidavit of non-residence, as appears by the certificate of the clerk of this court, on file in this cause. And thereupon, on the 25th day of April, 1879, the defendant presents to the court his petition and bond for removal of this cause to the circuit court of the United States for the southern district of Illinois, and on the 28th day of April, 1879, the said defendant files his motion for the removal of this cause to said court, and the court having considered said petition & motion, and being fully advised of and concerning the premises, orders and decrees that this cause be removed to the circuit court of the United States for the southern district of Illinois, and that the clerk of this court certify the records and proceedings in this cause to said court for further proceedings.

I. *Clerk's certificate.*

STATE OF ILLINOIS,
St. Clair County, ss:

I, Charles Becker, clerk of the circuit court St. Clair County, in the State aforesaid, do hereby certify the above and foregoing to be

52 a true and correct copy of bill for relief and exhibits thereto, summons, certificate of clerk, certificate of publication, petition to remove cause on ground of citizenship, bond for removal of cause, bill for a conveyance, and order of court in a certain cause lately pending in said court, on the chancery side thereof, wherein Joseph Ogle was complainant and James H. Simmons was defendant.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Belleville, this 5th day of May, A. D. 1879.

[L. S.] CHARLES BECKER, *Clerk.*

(Indorsed:) Filed May 30, 1879. J. A. Jones, clerk.

And afterwards, to wit, on the 4th day of June, at the June term of said court, in the year of our Lord one thousand eight hundred and seventy-nine, the following proceedings were had in said court and entered of record in said cause, to wit:

53 *Motion and leave to answer.*

JOSEPH OGLE
v.
JAMES H. SIMMONS. } In chancery.

On motion of defendant, by Messrs. Noetling and Halbert, his solicitors, leave is granted defendant to answer herein by the first Monday of July, inst.

And afterwards, to wit, on the 27th day of June, in the year last aforesaid, came the defendant, by his solicitors, and filed in the office of the clerk of said court his answer to the bill of complaint filed in said cause; which said answer is in the words and figures following, to wit:

54 *Answer.*

In the circuit court of the United States for the southern district of Illinois.

JOSEPH OGLE
vs.
JAMES H. SIMMONS. } In chancery. Bill for relief.

The answer of James H. Simmons, the defendant, to the bill of complaint of Joseph Ogle, the complainant.

This defendant now and all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereto, or to so much or to such part thereof as this defendant is advised it is or are material or necessary for him to make answer unto, answering, says, &c.:

This defendant admits that one John Winstanley did, on the 30th day of December, A. D. 1835, apply to enter the said south half (S. ½) of northeast quarter (NE. ¼) in section number three (3), township one (1) north, range line (9) west, of the 3rd P. M., in the manner and form as alleged in the said bill of complaint in this cause.

55 This defendant denies that the said application for the entry of said last-described tract of land was then and there filed amongst the archives of the said U. S. land office, or that the same has been on file at said place since said time at any time as alleged in the said bill of complaint. This defendant denies that the said application has been wrongfully removed or taken from the files of said office by any one. This defendant denies that there was at any time attached to the said application the official declaration set out in the said bill of complaint; denies that any such official declaration or act was ever in existence or was ever performed. This defendant admits that on the said last-named date the said tract of land was subject to sale by the U. S. This defendant denies that the said tract was ever purchased or paid for by the said John Winstanley, and denies that it so appears from the tract-book in office of the register of the land office, and denies that the entries alleged in the said bill to appear in the said book do so appear. This defendant denies

56 that a certificate (duplicate or otherwise) was ever issued to the said John Winstanley for said tract of land, denies that the entries set out in the said bill, and alleged to appear in the Edwardsville land office in the book of registers of certificates, do so appear. This defendant denies that the said number 13164 was ever inscribed upon the said tract upon the township map or plat in the said land office, and denies that the same was erased when and in the manner as alleged in the said bill, or in any other manner or time, or by any person whatsoever. This defendant denies that any of the other matters and things in the said bill alleged as appearing on the records of the said land office do so appear, or ever did so appear, and denies that there was anything in or about the said records to give the said defendant notice that the said John Winstanley had ever entered the said land, and denies that the said John Winstanley ever did enter the said tract of land, or pay for the same, alleged in the said bill of complaint. This defendant denies that the said John Winstanley, nor any one claiming

57 under or through him, has any claim or title said tract of land in law, in equity, or otherwise as against the United States, this defendant, or any one else. This defendant denies that the said tract of land was conveyed by the said John Winstanley on the 25th day of March, A. D. 1837, conveyed said tract of land, for a good & sufficient consideration, to one Wm. C. Anderson, as alleged in said bill, or in any manner whatsoever.

This defendant denies the giving of a mortgage by the said Wm. C. Anderson to the Commercial Bank of Cincinnatti, Ohio, or to the president, directors, or company, on said tract of land on April 1st, 1838, as alleged in the said bill of complaint; and denies that such proceedings were ever had, or any proceeding whatsoever, in said circuit court of St. Clair County and State of Illinois, or in any court whatsoever, in the foreclosure of such mortgage as alleged in the said bill. And denies the sale of the said tract of land by William C. Kinney, master in chancery, to one Jacob Strader and Joseph Smith, as alleged in the said bill. This defendant alleges that the said bank nor its trust-

58 ees nor officers could not and did take any title to the said tract of land. This defendant denies that the said Commercial Bank of Cincinnatti, Ohio, or its acting trustees conveyed the said tract of land to the said complainant on the 21st day of July, A. D. 1851, as alleged in the said bill. This defendant denies that the said complainant has any claim or title to the said tract of land, in law or in equity, and alleges that all the said conveyances in the said bill of complaint set out, if any such were made, are absolutely void in law and equity.

This defendant denies that the said complainant, as in the said bill alleged, took possession of and made valuable improvements on the said tract of land, denies that the said complainant has been in possession of said tract of land since 1856, until the eviction of him by the defendant or at his suit. This defendant denies that the said complainant has paid all the taxes on said tract of land as alleged in the said bill. This defendant admits that he purchased the said land from the United States Government, paying therefor the sum of dollars
59 per acre; that the said United States Government issued to him a patent for said tract of land on the 12th day of June, A. D. 1871, and that the same was recorded in recorder's office of said county on the day of , A. D. 187 . This defendant denies that the said complainant was in actual and notorious possession of the said land at the time of the issuing of the said patent as aforesaid to this defendant, and denies that the records of the U. S. land office at Springfield, Illinois, or the General Land Office showed that the said complainant had any claim or title or any pretended claim or title to the said tract of land or any part thereof. That in fact, as this defendant alleges, this defendant had no notice of any kind or character whatsoever of the pretended claim of title of the said complainant to the said tract of land. This defendant denies that the prices set out as the respective amounts paid for the west half of the northwest quarter, section 9, T. 2 N., R. 9 W., 3rd P. M., and S. ½ NE. q'r, sect. 3, T. 1 N., R. 9 W., 3d P. M., are stated correctly in the said bill, and denies that the said amounts were ever paid as alleged. This defendant
60 denies the issuing of a patent for said W. ½ NW. ¼, sec. 9, T. 2 N., R. 9 W., 3d P. M., to said Schaltter (William), as alleged in the said bill of complaint, and denies that the said defendant had seen or could have seen such entries upon the books in the land office as are set forth in the said bill. This defendant admits and alleges the facts to be, that some time in the fall of 1877 he instituted an action of ejectment against the said complainant in the U. S. circuit court for the southern district of the State of Illinois. This defendant further admits and alleges the fact to be, that on the 17th day of January, A. D. 1878, he obtained a judgment in said ejectment suit in said court against said complainant, by default, for the said south half of the northeast quarter of section 3, in township one north, range nine west, 3d P. M., in St. Clair County and State of Illinois.

That this defendant had no notice of any defence which might or could be *be* made by the said complainant in that suit or any suit in law or in equity. That on the day before the expiration of the
61 year from the date of said judgment, defendant, by his counsel, caused to be sued out of said court, where said judgment in ejectment was obtained, a writ of possession, which said writ of possession was duly executed by a duly qualified office' of said court, and the said defendant was duly placed in possession of the said last-named premises on the 20th day of January, A. D. 1879; that up to that time, and until the 20th day of February, A. D. 1879, this defendant never knew or had any means of knowing that the said complainant claimed said property as against the title of this defendant, although said ejectment had been commenced two years before that time nearly, and the patent had issued for the said land in 1871, as aforesaid; that afterwards, to wit, on the 20th day of February, A. D. 1879, and some time before the commencement of this suit, the said complainant instituted proceedings in the circuit court of the county of St. Clair and State of Illinois to enjoin the execution of the said judgment of this defendant against

said complainant, in the U. S. court so obtained as aforesaid;
62 that from the date of the issuing of the said patent for said tract of land to this defendant, and since the commencement of the said ejectment suit, this defendant has been at great expense in and about perfecting his title to said land and paying his counsel, &c., the said complainant never in any manner having asserted his title to the said land until as aforesaid. This defendant denies that such title and claim as the said complainant has, and such defences as the said complainant has, could not have been set up in the said ejectment suit; denies that the said complainant was ever so advised by any one learned in the law. This defendant expressly charges that the complainant has been guilty of laches herein.

This defendant admits that he is a merchant, residing in the city of Philadelphia, Penn'a; denies that he is unfamiliar with the public lands in the said State of Illinois. This defendant denies all charges of conspiracy to defraud the complainant with persons in the land office at Springfield, Ill., and at Washington, D. C.; denies entering or
63 securing patents for other lands in the State of Illinois, and denies all charges of conspiracy in regard to the said lands, or any lands in the said State of Illinois. This defendant denies that any information was furnished to him by any clerk or officer in the land office in regard to said tract of land last mentioned, as alleged in the said bill of complaint. This defendant denies that he has purchased the said tract of land as a mere speculative venture, but alleges that he purchased the same in perfect faith and without any notice of claim or title, or supposed claim or title, of the said complainant.

Denies that this defendant's patent and his obtaining possession thereunder are in any manner in fraud of the rights of the said complainant, or any one else. This defendant alleges that the said patent issued to this defendant was obtained and issued in perfect good faith. That although the said John Winstanley did, on the 30th day of December, A. D. 1835, apply to enter the said south half of northeast quarter of section three (3), town. one north, range nine west, 3rd P. M., the said application was, on the personal request of said John Winstanley,
64 on the same day cancelled and changed to the west half of northwest quarter of section 9, town. 2 N., R. 9 W., 3d P. M., instead, and all his payments applied thereto. And that, on the 2d day of December, A. D. 1839, a patent issued to the said John Winstanley for the said last-mentioned tract of land upon the said No. 13164, which was the first patent ever issued upon the said last-named tract of land; and the said patent alleged by complainants to have issued in 15th day of August, A. D. 1871, for the said last-mentioned tract of land to Wm. Schlatter, could not legally issue therefor. That the said last-named patent issue' shortly after the issuing of defendant's patent for the said tract in sec. 3, and was procured to be issued by fraudulent representations to the department, and for the purpose of enabling the said complainant to defraud this defendant of his legal right in the premises. This defendant further alleges that the said John Winstanley never took any further steps to secure a patent for the said tract so patented to this defendant, will knowing that he had no legal claim thereto. This defendant denies all allegations in the said bill of
65 complaint to the effect that search has been made for the said certificate No. 13164, in manner, &c., as alleged in the said bill, or in any place or manner whatsoever. Denies that the same was destroyed, as alleged in said bill, at the burning of the said Commercial Bank of Cincinnatti.

Denies that the same was ever in the possession of either the said William C. Anderson or the said bank, but alleges that the same was cancelled and changed as aforesaid. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged; without this, that there is any other matter, cause, or thing in the complainant's bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, and avoided, traversed or denied, is true; all which things this defendant is ready and willing to verify, aver, maintain, and prove as this honorable court shall direct, and prays hence to be dismissed with his reasonable costs & charges in this behalf most wrongfully sustained.

66 JAMES H. SIMMONS, *Defendant*,
By GEO. R. BURNETT,
NOETLING & R. A. HALBERT, &
F. A. McCONAUGHY,
His Solicitors.

(Indorsed:) Filed June 27, A. D. 1879. J. A. Jones, cl'k.

And afterwards, to wit, on the 7th day of July, in the year last aforesaid, came the complainant, by his solicitors, and filed in said clerk's office his replication in said cause; which replication is in the words and figures following, to wit:

Replication.

In the southern district of Illinois, U. S. circuit court. In chancery, in the United States circuit court of the southern district of Illinois, of the June term, A. D. 1879.

The replication of Joseph Ogle, complainant, to the separate answer of James H. Simmons.

67 This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto saith that he does and will aver, maintain, and prove said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant; and the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without this, that any other matter or thing in the said answer*ed* contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, trav-er'ed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

J. L. D. MORRISON, AND
STUART, EDWARDS & BROWN,
Solicitors for Complainant.

(Indorsed:) Filed this seventh day of July, 1879. J. A. Jones, clerk.

68 And afterwards, to wit, on the 10th day of July, at the June term of said court, in the year last aforesaid, the following fur-

ther proceedings were had in said court and entered of record in said cause, to wit:

Leave to amend answer.

JOSEPH OGLE
v.
JAMES H. SIMMONS. } In chancery.

On motion of defendant, by Messrs. Noetling and Halbert, his solicitors, leave is granted to amend his answer herein instanter.

And afterwards, to wit, on the 2d day of January, in the year of our Lord one thousand eight hundred and eighty, at the term last aforesaid, the following further proceedings were had in said court and entered of record in said cause, to wit:

69 *Order extending time to take testimony.*

JOSEPH OGLE
v.
JAMES H. SIMMONS. } In chancery.

On motion of complainant, by his solicitors, time to take testimony herein is extended to 1st day of February next.

And afterwards, to wit, on the 29th day of June, at the June term of said court, in the year of our Lord one thousand eight hundred and eighty, the following further proceedings were had in said court, and entered of record in said cause, to wit:

Order setting cause for hearing.

JOSEPH OGLE
v.
JAMES H. SIMMONS. } In chancery.

This day come the parties by their solicitors, and by consent this cause is set for hearing on the 12th day of July next.

70 And afterwards, to wit, on the 8th day of January, at the January term of said court, in the year of our Lord one thousand eight hundred and eighty-one, the following further proceedings were had in said court, and entered of record in said cause, to wit:

Order setting cause for hearing.

JOSEPH OGLE
v.
JAMES H. SIMMONS. } In chancery.

By consent of parties by their solicitors, this cause is set for hearing on 16th day of February next.

And afterwards, to wit, on the 16th day of February, at the term and in the year last aforesaid, the following further proceedings were had in said court, and entered of record in said cause, to wit:

Order on submitting cause.

JOSEPH OGLE
v.
JAMES H. SIMMONS. } In chancery.

This day come the parties by their solicitors and submit this cause to the court on the pleadings and proofs.

71 *Deposition for complainant.*

Depositions on behalf of complainant.

In the United States circuit court for the southern district of the State of Illinois.

JOSEPH OGLE
vs.
JAMES H. SIMMONS. } Bill in equity for relief.

By consent of parties to the above-entitled cause now pending in said U. S. circuit court, the following depositions were taken before me, a United States commissioner of said court, this 9th day of September, A. D. 1879, the complainant being present by his solicitor, J. L. D. Morrison, and the defendant by his solicitor', F. A. McConaughy and Geo. B. Burnett.

JAMES SHAY, being duly sworn, upon his oath testified as follows, to wit:

I am about forty years old, and reside in St. Clair County, Illi-
72 nois. I am acquainted with the land described in the bill of com-
plaint, to wit: The south half of the northeast quarter of section No. three (3), in township No. (1) one north, of range No. nine (9) west, containing eighty (80) acres, more or less, in the county of St. Clair, State of Illinois.

To my best recollection, Mr. Joseph Ogle went into possession of this land about nineteen (19) years ago. He built a house and had it fenced. Mr. Ogle held & continued in possession until about last January, when he was dispossessed. (This testimony is objected to.)

Int. Did Mr. Ogle claim title to said premises during the time he was in possession?

(Objected to.)

Ans. He did, all the time; never knew anybody else claim title until lately.

Cross-examination:

Int. Would you have known that any one else besides Mr. Ogle had ever claimed title within the last nineteen years?

Ans. I would, because I have always been around there.

Int. Did you never hear that in 1871 James H. Simmons obtained a patent for the lands in question from the United States?

Ans. No, sir; I never heard a word.

73 Int. Would you have heard of it if that had been the case?

Ans. Very likely I would, as I have always been right close in the neighborhood.

his
JAMES + SHAY.
mark.

Subscribed and sworn to before me this 9th day of September, A. D. 1879.

FRED. E. SCHEEL,
U. S. Commissioner.

JOSEPH OGLE, being first duly sworn, on his oath testifies:

I am the complainant in this cause. I went into possession of the lands in controversy from the time I received the deed from the trustees of the Commercial Bank of Cincinnatti. The deed is dated 21st day of July, A. D. 1851. I remained in possession until I was put out in last January, under a judgment of the United States circuit court. I have always claimed title to said land under said deed. (Testimony objected to.) To the best of my knowledge I paid the taxes on said land every year since.

Now the following tax receipts are introduced: For the year 1853, $3.11; for 1854, $3.57; for 1867, $32.35; for year 1855, $7.12; for year 1852, $3.39; for year 1851, $2.21; for the year 1850, valuation,
74 $3.36; but receipts does not show what I paid (this receipt objected to, as the receipt does not show any payment); for the year 1868, $33.79; for the year 1858, $4.68; for the year 1863, $14.03; for the year 1860, $8.19; for the year 1859, $8.19; for year 1856, $7.84; for the year 1857, $4.68; for the year 1866, $18.90; for the year 1864, $24.78; for the year 1861, $7.98; for the year 1869, $85.65; for the year 1870, $78.67; for the year 1875, $71.49; for the year 1873, $31.69; for the year 1877, $45.53; for the year 1872, $92.09; for the year 1874, $53.20; for the year 1871, $102.05—this a certificate of redemption from tax-sale for the premises for the year 1876—receipt—55.23.

For the other years that I did produce receipts I cannot find them, but I paid the taxes.

(Objected to.)

Cross-examination:

Int. When did you actually take possession of this land?

Ans. About the time spoken of by witness Shay, when a house was built on it and the land fenced; may be four five years before that time. I think, I took some wild-cherry logs off the land.

Int. When did you first receive notice of the patent of the government to James H. Simmons, to this land?

75 Ans. I received the first intimation through John B. Bowman, may be in 1872; I can't say for certain about that.

Int. Had you ever had the title to this land examined prior to 1872, or since?

Ans. Before that I never did. Since then, some three or four years ago, I had it examined. I recollect of no examination that I had made before 1872.

Re-examination:

The knowledge that I got, that Simmons claimed the land, I got from Bowman, in a casual conversation, about 1872.

JOSEPH OGLE.

Subscribed and sworn to before me this 9th day of September, A. D. 1879.

FRED. E. SCHEEL,
U. S. Commissioner.

It is stipulated and agreed by and between counsel that all objections to this testimony and to documentary evidence shall be heard on the trial of this cause.

FRED. E. SCHEEL,
U. S. Commissioner.

(Indorsed:) Filed Sept. 15, 1879. J. A. Jones, cl'k.

76 *Depositions for complainant.*

Depositions on behalf of the complainant.

In the circuit court of the United States for the southern district of Illinois.

JOSEPH OGLE
v.
JAMES H. SIMMONS. } Relief, &c.

Depositions of J. L. D. Morrison, John B. Bowman, Thomas Winstanley, and Joseph Ogle, taken before H. M. Needles, a notary public within and for the county of St. Clair and State of Illinois, at the office of F. A. McConaughy, in the city of Belleville, in the county of St. Clair and State of Illinois, by consent of parties, May 1, 1880, on behalf of Joseph Ogle, the said complainant.

Present: J. L. D. Morrison, esq., att'y for Joseph Ogle.
" F. A. McConaughy, esq., att'y for James H. Simmons.

J. L. D. MORRISON, being duly sworn, deposes and saith:

That he is familiar with the mode formerly in use in Kaskaskia and Edwardsville land-offices, in the State of Illinois, of entering
77 the public lands in vogue prior to 1860. That as early as 1851 the west half of the northwest quarter of section nine (9), township two (2) north, range 9 west, in the Edwardsville district, had marked upon it on the township plat, in distinct letters, the letters "A. P."

(This portion objected to because it is not competent to prove a fact of this kind by oral testimony.)

These letters indicated, as deponent learned from the register and receiver of the land office at Kaskaskia, also from the land office at Edwardsville—indicated "Applied and paid for." The said land was at that time—1851—unoccupied and, so far as this deponent knows, unclaimed by any one to him known.

(Foregoing objected to.)

Deponent was extensively engaged in hunting up and purchasing such titles. He examined the land-office books of entries under the credit system and found therefrom that the west half of the northwest quarter of section nine (9), 2 north, 9, had been finally paid for by William Schlatter, of Philadelphia, by applying certificates of re-
78 linquished lands to its payment, and that no final certificate had issued thereupon.

(Foregoing objected to.)

Thereupon, on the 15th day of August, in the year 1851, this deponent purchased of Joseph T. Mather, Samuel Spockman, & Daniel Lam-

mott, of Philadelphia, assignee of William Schlatter, the said tract of land, and took their deed therefor.

(Foregoing objected to.)

This deponent does not now recollect of particarluly examining the township plat W. ½ NW., 9, two north, nine west, after 1851, until Mr. Joseph Ogle, the complainant in this case, called his attention to the fact that Mr. Simmons, the defendant in this case, or his attorney, that one John Winstanley had entered the west half of the northwest of nine about the year 1835. At the time this deponent got this information the records of the Edwardsville land office were in the hands of a custodian at Springfield, Illinois. This deponent went up to Springfield and examined the township plat and found that the letters A. P. on the northwest of nine had been attempted to be erased, and partially successfully, the erasure being very distinct upon the paper, and the figures

13164 written over the erasure. Those figures were not on the
79 plat when deponent bought the land in 1851.

Deponent then turned to the township plat of town. one north, nine west, in Edwardsville district, and examined the plat of south half northeast of three, and found that an erasure, badly abrading the paper, had been made there.

And over the said erasure was written the figures 29596.

(The foregoing objected to.)

This deponent further says that on a recent visit to the General Land Office at Washington, where this original township plat now is, he examined both tracts of land again, and such examination confirmed him in his conclusion as to erasures he saw at Springfield.

Upon examining the south half of the northeast of section three, town. one north, nine west, through a strong glass furnished by the department, amongst the figures erased a figure three was plainly discernable. I went to a photographer, to whom I was recommended, to try and get a photographic copy of both plats to show the erasures, and was informed that a photographic copy would not show.

(Foregoing objected to.)

Cross-examination:

Q. State when Ogle, complainant, first called your attention
80 to the Simmons patent to the south half of the northeast quarter of section three, town. one north, range 9 west?

A. I can't recollect exactly. I think it was just before he was sued in ejectment before the United court for the land.

Q. State whether you are not counsel for the complainant in this case.

A. I am.

Q. State whether you have not yourself at one time claimed to own the west half of the northwest quarter of section nine, town. two north, range nine west, and executed warranty deeds and conveyed your title thereto?

A. Yes; I not only claimed title thereto, but I owned the title thereto, and I conveyed it by warranty deed about twenty years ago.

Q. Were you not instrumental in securing the issuing of a patent for west half NW. ½ sec. 9, T. 2 N., R. 9 W., to William Schlauter after his demise and after said tract had been patented to John Winstanley?

A. I can't say how long ago, but within the last ten years, a young gentleman came to my house in St. Louis and told me he was a grand-

son of William Schlauter, of Philadelphia—I think it was in
81 1872—and that he had patents, which he showed me, for the W.

½ of the NW. of T. 2, N. 9, and for the NW. fractional quarter of sec. 5 (five), T. 2 N., 9. issued to William Schlatter, his grandfather, or to his legal representatives—I don't recollect which, and that in inquiry in the neighborhood of the lands he found that I had had claim to them and sold one of them, and he wanted to know what pretense of claim I had. I showed him my deed from his father's assignees for the land. He went off, and I never heard of the fellow since. I had nothing to do with getting the patent, and don't know how it was procured.

Q. You state that in 1851 the W. ½ NW. qr., sec. 9, T. 2 N., 9, on the plat thereof (township plat) had marked on it "A. P.;" you further state that those letters signify applied and paid for; do they indicate who applied and paid for it?

A. No; they only indicate that the United States had parted with its title to them.

Q. When did you first examine this township plat book?

A. I can't recollect exactly. Perhaps as early as 1845; may be earlier. There were a great many old entries and relinquishments in that section.

82 JAS. L. D. MORRISON.

Subscribed & sworn to before me this 1st day of May, A. D. 1880.

[L. S.] HENRY M. NEEDLES,
Notary Public.

JOHN B. BOWMAN, being duly sworn, deposes and saith:

I knew John Winstanley, a resident of the American Bottom, by reputation since 1851, and personally intimately since 1858 up to the time of his death in 1860. He was a man of more than ordinary intelligence, a good scholar, and especially familiar with land titles in the neighborhood of East St. Louis, then Illinoistown. From 1856 to 1859, I lived on my farm in section 4, town. 2, nine, within a half a mile of the west half of the Northwest quarter of section nine, town. two, nine. The latter was then unoccupied. It was good land. It had a small slough running across it. It was as good as any of the bottom land. I was looking to buy more land and inquired of John Winstanley on the occasion of a visit by him at my house on that farm, some time in 1858 or early in 1859, to whom the west half of the northwest quarter of
83 section 9 belonged to, telling him I would like to buy it. He had the reputation, from his long residence in the American Bottom and that vicinity, of knowing the ownership of *of* lands generally. He told me at that time that it belonged to Don Morrison and John Thomas, but he thought they held it by tax title; that he did not know who the good title belonged to; he thought it was some parties East.

(Whole of foregoing objected to.)

JOHN B. BOWMAN.

Subscribed and sworn to before me this 1st day of May, 1880.

[L. S.] HENRY M. NEEDLES,
Notary Public.

THOMAS WINSTANLEY, being duly sworn, deposes and says on oath:

I am a son of John Winstanley. I lived on a farm in the bottom; moved there in 1846. My father lived with me from that time until his death in 1860. My father was a man of more than ordinary intelli-

gence. My father was a mile and a half or two miles from W. ½
84 of NW. of sec. 9, T. 2 N., R. 9. My father never claimed the W. ½ of NW. of sec. 9, T. 2 N., R. 9, to my knowledge. (Objected to.) It was more valuable during the whole of that time than the tract in sec. 3. My father had the reputation of being familiar with lands and titles. My father said that he entered the land for Anderson, the S. ½ of the NE. of sec. 3.

Cross-examination:

Q. Did you ever know your father to claim this other tract, the S. ½ of the NE. of sec. 3?

A. I never knew that he owned it until it was sold to Ogle. I guess my father traded in land that I did not know anything about, and also owned land.

Q. Are you able to state that your father never had a patent in his possession for W. ½ NW. sec. 9, T. 2 N., 9?

A. No, sir.

Q. Your father could read?

A. Yes, sir.

Q. Was he a careful man?

A. Tolerable.

Q. Was he in the habit of paying money and receiving receipts without looking at the receipts and acknowledgements to see what he was getting?

A. I think not.

85 Re examined:

Q. When did you first hear that a patent had been issued to your father on the W. ½ NW. sec. 9, T. 2 N., 9?

A. This morning.

Q. What is your age and occupation?

A. Age, 56 years; am farmer; president of the East St. Louis Bank.

THOMAS WINSTANLEY.

Subscribed and sworn to before me this 1st day of May, A. D. 1880.

HENRY M. NEEDLES,

[L. S.] *Notary Public.*

JOSEPH OGLE, being first duly sworn, on his oath deposes and saith:

Q. State what search, if any, you have made for the final certificate of entry of south half of the northeast of three, one north, nine?

A. I went down to Mr. John Winstanley's and examined through all of his papers and did not find it.

I got Mr. Thomas Winstanley to write to Mr. William C. Anderson, jr., son and administrator of William C. Anderson, to whom Mr. Winstanley sold the land. He wrote back that he could find no
86 paper of that kind among his father's papers. I then went to Cincinnati to look for the papers at the Commercial Bank of Cincinnatti. They said that *that* the majority of the papers of the bank had been burned, so I failed to get the certificate or any information about it. I do not know where it is, nor have I ever seen it.

I have paid all the taxes on that land, south half northeast, three, ever since I bought, up to 1878. I had a tax title to this land before I bought it. I paid $285.74 back rents to Simmons after his recovery in ejectment.

(All of the foregoing testimony of Joseph Ogle objected to.)

JOSEPH OGLE.

Subscribed and sworn to before me this 1st day of May, A. D. 1880.
[L. S.] HENRY M. NEEDLES,
Notary Public.

(Indorsed:) Filed April 14, 1881. J. A. Jones clerk.

87 And afterwards, to wit, on the 14th day of April, in the year of our Lord one thousand eight hundred and eighty-one, there was filed in said clerk's office the judge's certificate of evidence in said cause; which said certificate is in the words and figures following, to wit:

Judge's certificate of evidence.

In the circuit court of the United States for the southern district of Illinois.

JOSEPH OGLE
vs.
JAMES H. SIMMONS. } In chancery. Bill for relief.

Be it remembered that on the hearing of the above cause in said court, on the 14th day of April, A. D. 1881, the following evidence was given. On behalf of the complainant the following documents:

1. *Application of Winstanly & register's certificate.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
December 17th, 1879.

I, J. M. Armstrong, Acting Commissioner of the General Land
88 Office, do hereby certify that the annexed copy of the application of John Winstanly, No. 13164, and abstract of the register's book of sales showing the entry of John Winstanly, No. 13164, is a true and literal exemplification from the local land-office records now on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] J. M. ARMSTRONG,
Acting Commissioner of General Land Office.

Date.	No. of certificate.	Name.	Residence.	Description.	Sec.	Town.	Range.	Acres.	Hundredths.	Dollars.	Cts.	Dollars.	Cts.
1836. December 30th [* See below.]	13,164	John Winstanly	St. Clair	South half of northeast qr.	3	1 N	9	84	46	1	25	105	57

[*13164 changed to NE. ¼ of NW. ¼ 9, 2 N., 9 W., 3d.]

13164.] LAND OFFICE, EDWARDSVILLE, ILLINOIS,
December 30th, 1835.

I, John Winstanly, of St. Clair Co., Illinois, do hereby apply
89 for the purchase of the south half of the northeast quarter of

* In pencil.

section No. three, township No. one north, range No. nine, west of the third principal meridian, containing eighty-four acres and $\frac{46}{100}$ *hundredths*, according to the returns of the surveyor-general, for which I have agreed with the register to give at the rate of one dollar & $\frac{25}{100}$ per acre.

JOHN WINSTANLY.

84 46
21 11
---
5 57

I, Sam'l H. Thompson, register of the land office at Edwardsville, do hereby certify that the lot above described contains eighty-four acres and $\frac{46}{100}$ *hundredths*, as mentioned, and that the price agreed upon is one dollar & $\frac{25}{100}$ per acre.

S. H. THOMPSON, *Register.*

(Indorsed:) Filed April 14, 1881. J. A. Jones, clerk.

No. 13163.] 2. *Register's check & aud. certificate.*

Dec. 30, 1835, to John Arnett, of Morgan County, State of Illinois, for SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ section No. 19, township No. 13 north, range No. 8 west of the third principal meridian, containing 40 acres, at $1.25 per acre.

$50.] S. H. THOMPSON, *Register.*

90 No. 13164.]

Dec. 30, 1835, to John Winstanley, of St. Clair County, State of Illinois, for S. $\frac{1}{2}$ NE. $\frac{1}{4}$ section No. 3, township No. 1 north, range No. 9 west of the third principal meridian, containing 84 $\frac{46}{100}$ acres, at $1.25 per acre.

$105.57.] S. H. THOMPSON, *Register.*

No. 13165.]

Dec. 30, 1835, to Thomas L. P. Neal, of Clinton County, State of Illinois, for W. $\frac{1}{2}$ NW. $\frac{1}{4}$ section No. 14, township No. 9 north, range No. 12, west of the third principal meridian, containing 80 acres, at $1.25 per acre.

$100.] S. H. THOMPSON, *Register.*

AUDITOR'S OFFICE, ILLINOIS,
Springfield, February 16th, 1881.

I, Charles P. Swigert, auditor of public accounts of the State of Illinois, do hereby certify that the annexed instrument is a photographic copy of "certificate checks" No. 13163, 13164, and 13165 of lands at the United States district land office at Edwardsville, Illinois, now on file in and forming part of the records of this office.

In testimony whereof I hereunto subscribe my name and affix the seal of my office at Springfield the day and year above written.

[L. S.] CHAS. P. SWIGERT,
Auditor Public Accounts.

(Indorsed:) Filed April 14, 1881. J. A. Jones, clerk.

91 3. *Photographs of checks & certificate of judge.*

(Here follow photographic exhibits.)

By order of the court the foregoing original paper' in evidence on the hearing are made parts of the record, and the court certifies that the three checks of which the above photographs are copies were in a bundle of papers from the auditor's office of the State of Illinois, and with an endorsement on said bundle as follows: "Checks of final certificates" and said bundle was offered in evidence by a clerk of said auditor's office, who testified that said bundle of papers were papers from the Edwardsville land office, the records of which, by law of the State of Illinois, were required to be filed in said auditor's office.

92 4. *Stipulation as to deeds & value of property.*

In circuit court of United States, southern district of Illinois.

JOSEPH OGLE
vs.
JAMES H. SIMMONS. } Bill in chancery for relief.

It is admitted by the parties to the above suit that said John Winstanley made and delivered to the said Anderson the deed marked Exhibit "A" to the above bill on the day therein specified, and never made any other conveyance of the premises described in said deed, and that there is a regular chain of conveyances from said Anderson to the said Joseph Ogle, by deed dated July 21, 1851, and Ogle has made no
93 conveyance thereof, and it is further admitted that said premises are worth more than five thousand dollars.

Feb. 16th, 1881.

R. A. HALBERT, &
F. A. McCONOUGHY,
Sol's for Respondents.
JAS. L. D. MORRISON,
Sol's for Compl't.

(Indorsed:) Filed February 16, '81. J. A. Jones, clerk.

5. *Extract from tract-book.*

	Section.	Township.	Range.	Quantity. Acres.	Hundredth.	To whom sold.	Residence.	When sold.
S. ½ of NE.....	3....	1 N.	9 W.	85...	17...	John Winstanly	St. Clair County, Ills.	December 30, 1835.

AUDITOR'S OFFICE, ILLINOIS.
Springfield, September 15, 1879.

I, Thomas B. Needles, auditor of public accounts of the State of Illinois, certify that the foregoing is a full, true, and correct copy of the headings and entry of John Winstanly of the S. ½ of NE ¼ sec. 3, t'p 1 N., R. 9 W., as recorded on page 28 of tract-book A of the United

No. 3763 Dec 30 1835 to [illegible]

of Morgan County, State of Illinois for [illegible]

Section No. 19 Township No. 12 North Range No. 8 W

meridian, containing 40

Acres, at $1.25 per acre

$ 50

$1.9[illegible]

No. 13764 Dec 30 1835 to John Winston

of St Clair County, State of Illinois for [illegible]

Section No. 3 Township No. 1 North Range No. 9 West

meridian, containing 84.46/100 Acres, at $1.25 per acre

$105.57

[illegible]

No. 13765 Dec 30 1835 to Samuel [illegible]

of Clinton County, State of Illinois for [illegible]

Section No. 14 Township No. 9 North Range No. 1[illegible] W

meridian, containing 80 Acres, at $1.25 per acre

$ 100

$14.[illegible]

thereof:

91 3 *Photographs of checks & certificate of judge*

States land-office located at Edwardsville, in the State of Illinois, now on file in this office.

94 In testimony whereof I hereunto subscribe my name and affix the seal of my office the day and year above written.

L. S.] T. B. NEEDLES, *Auditor.*

(Indorsed:) Filed April 14, 1881. J. A. Jones, clerk.

6. *Certified copy of final certificate to Schlatter.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 16, 1878.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed copy of Edwardsville, Illinois (duplicate), final certificate No. 498 in favor of William Schlatter, assignee of Ninian Edwards, is a true and literal exemplification of the same on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] J. A. WILLIAMSON,
Commissioner of General Land Office.

95 (Duplicate.)

No. 498.] *Final Certificate.*

Where part of the tract has been relinquished (under the act of Congress of 2d March, 1821).

No. .] LAND OFFICE AT EDWARDSVILLE, ILLINOIS,
Sept. 24th, 1822.

It is hereby certified, that pursuant to several acts of Congress, providing for the sale of lands of the United States, Ninian Edwards, of Randolph County, Illinois, on the eighth day of May, 1817, purchased of the register of the land office at Edwardsville the lot or northwest quarter section No. 9, in township No. 2 N., of range No. 9, W. of the 3d P. M. district, containing one hundred and sixty acres, at the rate of two dollars and cents per acre; and to complete the payment of said lot or NW. ¼ section, William Schlatter, assignee of Ninian Edwards, by his att'y, James Clemens, jr., has availed himself of the relief granted by the act of Congress passed on the 2d day of March, 1821, entitled "An act for the relief of the purchasers of the public lands prior to the 1st day of July, 1820." His account for said lot or northwest quarter-section has, therefore, been finally settled and closed in the books of this office, as will appear from the following statement thereof:

96	Dollars.	Cents.		Dollars.	Cts.
Dr.			Cr.		
1817.			1817.		
May 8. NW. ¼ sec. 9, 2 N., 9 W., 160 acres, at $2 ..	320	"	May 8. By cash $16		
			June 17. " " 64	80	"
			1822.		
			Sept. 24. By cash transferred from NE. ¼ 8, 2 N., 0 W	80	"
			Sept. 24. By E. ½ NW. ¼ 9 ½ N., 9 W. Relinq'd per relinq't No. 369.	160	"
	$320	"		$320	"

(Written in red ink on face:)

Issue patent for W. ½ NW. ¼ 9, 2 N., 9 W.

LIPPINCOTT.

Transmit patent to Alfred D. Chandler, 14 Devonshire st., Boston, Mass., as per accompanying affidavit.

LIPPINCOTT.

Now, therefore, be it known that on presenting this certificate to the Commissioner of the General Land Office, William Shclatter, assignee of Ninian Edwards, shall be entitled to receive a patent for the lot or W. ½ NW. ¼ section above described.

Springfield, Ill's, June 8th, 1871.

WM. F. ELKING,
Register of the Land Office.

EDWARDSVILLE, ILL'S.

Final certif. 498.

(Duplicate.)

Pat. Aug. 15th, 1871. Rec. vol. 9, page 244. Ex.

(Indorsed:) Filed Mar. 31, 1879. Charles Becker, clerk.
(Also indorsed:) Filed April 14, 1881. J. A. Jones, clerk.

Assignment of Wm. Schlatter.

This indenture, made this 3d day of December, in the year one thousand eight hundred and twenty-two, between William Schlatter, of the city of Philadelphia, merchant, and Catherine V., his wife, of the first part, and Samuel Spackman, Daniel Sammot, and Joseph I. Mather, of the same city, of the second part:

Whereas the said William Schlatter is at present unable to discharge all his debts, but is willing to provide for them by an assignment of all his property: Now this indenture witnesseth that the said William Schlatter and Catherine V., his wife, in consideration of the premises, and of the sum of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred, and set over, and by these presents do grant, bargain, sell, assign, transfer, and set over unto the said

party of the second part, their heirs, executors, and administrators, all and singular his, the said William Schlatter's, messuages, lots, lands, tenements, and hereditaments whatsoever, and wheresoever situated, and all and singular his goods, chattels, bonds, bills, notes, monies,
98 rights, credits, and effects, whatsoever, and all and singular the title-deeds, vouchers, books of account, muriments, and other evidences thereof, and the rents, issues, profits, privileges, immunities, and advantages to the same, or any part thereof, belonging or in any wise appertaining, and all the estate, right, title, property, claim, and demand of him the said William Schlatter and Catherine V., his wife, of, in, or to the same, and every part thereof, to have and to hold the same to the said party of the second part, their heirs, executors, administrators, and assigns, to his and their proper use and behoof forever; in trust, nevertheless, to and for the uses and purposes hereafter mentioned; that is to say, in trust by sale, either public or private, and by suit or otherwise *and by suit or otherwise* to reduce all the estate, real and personal, hereby assigned or conveyed, into money, and after deducting thereout all the expenses of this trust, and a reasonable compensation for the services of the said trustees then in trust, to pay and distribute the same rateably, in proportion to their respective debts, to and among all the creditors of the said William Schlatter who, if they are creditors in any
99 other way or manner as holders of the paper of the said William, endorsed by Adam Konigmacher or Condy Raquet, shall, within nine calendar months from the date hereof, execute and deliver to the said William a full and absolute release of their respective debts and demands, and if they are creditors as holders of the said paper, shall, within six years from the date hereof, execute and deliver to the said William a like full and absolute release as aforesaid, and if any surplus shall remain after paying all the said creditors in full, then in trust to pay the same to the said William Schlatter, his executors, administrators, and assigns. And it is hereby expressly agreed, stipulated, and directed that in case a dividend shall at any time be declared and payable before all the said creditors last above referred to shall have executed and delivered the said release, the rate or portion appertaining to such of the creditors as shall not have executed and delivered the same shall by the said party of the second part invested in their name, as assignees of the said William, in the public debt or stock of the United States, or in the loans or debt of the city of Philadelphia, and the
100 interest thereof shall, from time to time, in like manner, be invested, and the same, or the portion thereof appertaining to such creditors, respectively, shall, on their respectively executing and delivering the said release within the said term of six years, be paid them, respectively, and in case any of the said creditors shall wholly refuse or neglect to execute and deliver the said release within the said term of six years, that then the dividends, portion, rates, and investments appertaining to the debts or demands of such creditors, respectively, shall, at the expiration of the said terms, be forthwith distributed and paid to among all the creditors of the said William Schlatter, of every description, who shall have executed and delivered a release to him in the manner and time herein provided, in proportion to their respective debts and demands then unpaid, and if they shall then be fully paid, then the same shall be paid to the said William Schlatter, his executors, administrators, or assigns. And it is hereby further agreed, stipulated, and provided, that in case any or either of the creditors of the said William Schlatter, of any description,

shall, at any time before executing and delivering the release aforesaid, sue, arrest, attach, prosecute, or in any way implead him, the said
101 William, his executors or administrators, or shall distrain, disturb, attach, seize or molest his or their goods, chattels, or estate by any manner of process or proceeding for or on account of, or by pretext or colour, of any debt, duty, demand, or sum of money now due, owing, payable, or contracted for by the said William, then, and in that case, the share, portion, rate, or dividend which would have accrued and become payable to such creditor or creditors respectively, on executing and delivering such release, shall in no event be payable to him or them, but the same shall thereupon go and be divided to and among the other releasing creditors in like manner as if a trust for such creditors exclusively and by name had been originally created.

And it is hereby further directed and provided, that when and so often as the said party of the second part shall have in hands a sufficient sum nett to declare and pay a dividend of two per centum on the amount of debts entitled, as well contingently as actually, to claim under this assignment, the same shall forthwith be declared accordingly, and paid or invested in manner hereinbefore directed. And it is hereby further agreed, directed, and provided, that the said party of the
102 second part shall be at liberty from time to time to appoint such and so many agents and attorneys as they may deem necessary for the better collection and management of the said estate and effects, and that they, said party of the second part, shall be in no wise answerable for any loss or damage arising from the neglect or default of the said agents or attorneys, nor shall either of them the said party of the second part be answerable to the said creditors or to the said William Schlatter for the debt, default, or miscarriage of the other or others, or for anything more than his own receipt, debt, default, or miscarriage; and for the better enabling the said party of the second part to execute this trust the said William doth hereby make, constitute, and appoint the said party of the second part his true and lawful attorney and attornies, irrevocable, to ask, demand, sue for, recover, and receive the premises hereby assigned, and on the receipt thereof to give acquittances or enter satisfaction on record therefor, and to compound, compromise, and arbitrate the same, and an attorney or attornies under them to substitute, and at their pleasure to revoke and substitute others,
103 and generally to do all and whatsoever may be lawful and expedient in the premises, hereby ratifying all that his said attornies or their substitutes shall lawfully do in the premises.

In witness whereof the said parties have hereunto interchangeably set their hands and seals the day and year first above written.

WM. SCHLATTER. [SEAL.]
C. V. SCHLATTER. [SEAL.]

Sealed and delivered in the presence of us. The words "transfer" in the fifteenth line from the top of the first page, and the words "executing" in the twenty-third line from the top of the second page being interlined before signing.

Y. BADGER.
ANNA RAQUET.

PHILADELPHIA, *December 3d*, 1822.

We accept this trust.

SAMUEL SPACKMAN.
DANIEL LAMMOT.

CITY OF PHILADELPHIA.

Before me, the subscriber, an alderman of the city of Philadelphia, personally appeared William Schlatter and Catherine V., his wife, and acknowledged the foregoing assignment to be their voluntary act and deed; she, the said Catherine V., being separate and apart from
104 her said husband examined, did declare that she executed the same of her own free will and accord, without any compulsion or coercion of her said husband, the contents thereof being first made known to her.

Witness my hand and seal this third day of Decem'r, A. D. 1822.

Y. BADGER, *Ald.* [SEAL.]

Recorded the 4th Decem'r, 1822.

CITY OF PHILADELPHIA, *ss:*

I, George W. Colladay, recorder of deeds, &c., for the city and county of Philadelphia, do certify that the above and foregoing is a true copy of a certain instrument of writing remaining of record in my office, in deed book I H, No. 6, page 135, &c.

Witness my hand and seal of office this twenty-seventh day of January, A. D. 1850.

[L. S.] GEORGE W. COLLADAY, *Recorder.*

STATE OF PENNSYLVANIA,
City & County of Philad'a, ss:

I, John Williams, clerk of the court of oyer and terminer and
105 quarter sessions of the peace for the city and county of Philadelphia (being a court of record, and having a seal), do certify that the above acknowledgment of assignment is in due conformity with the law of Pennsylvania, and that S. Badger, before whom the said acknowledgment was made, as appears by the above copy, was at the time of the taking of the same an alderman of the city of Philadelphia, and ex-officio a justice of the peace, duly empowered to do such acts.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court this 16th day of August, A. D. 1851.

[L. S.] JNO. WILLIAMS, *Clerk.*

STATE OF PENNSYLVANIA,
City of Philadelphia, ss:

Be it remembered that on this 25th day of April, A. D. eighteen hundred and fifty-five, in said city and State, before me, James Henry Carr, a commissioner, residing in said city, duly appointed and commissioned by the governor of the State of Illinois to take the acknowledgment and proof of the execution of deeds and other instru-
106 ments in writing under seal, to be used or recorded in said State of Illinois, personally appeared Matthias Meyers, who is personally known to me as the chief clerk in the office for recording deeds in and for said city, and who being duly sworn, according to law, did depose and say that the foregoing instrument, certified to by George W. Colladay, esquire, late recorder of deeds, was carefully compared by him with the original record remaining in said office in deed book I H, No. , page 135, &c., and that it is a just and true copy of the same, and that it was acknowledged, proven, and recorded according to law, to the best of his knowledge and belief.

MATHIAS MEYERS.

Sworn to and subscribed before me. In witness whereof I have hereunto set my hand and affixed my official seal, as commissioner of the said State of Illinois, at my office in the city of Philadelphia and State aforesaid, this 25th day of April, A. D. 1855.

[L. S.] JAS. H. CARR,
Commissioner of State of Illinois for the City of Philadelphia.

107 (Indorsed:) Filed Sept. 5th, 1851. Recorded book A, No. 2, page 299 & fol. Theod. Engleman.
(Also indorsed:) Filed April 14, 1881. J. A. Jones, clerk.

8.—*Copy of certificates from Edwardsville, Ill's, land office.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 8, 1881.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed copies of Edwardsville, Illinois, certificates of purchase Nos. 13163 and 13165 are true and correct exemplifications from the originals on file in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] J. A. WILLIAMSON,
Commissioner of General Land Office.

No. 13163.] LAND OFFICE AT EDWARDSVILLE, ILL.,
December 30, 1835.

108 It is hereby certified that, in pursuance of law, John Arnett, of Morgan County, Illinois, on this day purchased of the register of this office the lot or southeast quarter of the northeast quarter of section number nineteen, of township number thirteen north, in range number eight west of the third principal meridian, containing forty acres and hundredths of an acre, at the rate of one dollar and twenty-five cents per acre, amounting to fifty dollars cents, for which said John Arnett has made payment in full as required by law.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said John Arnett shall be entitled to receive a patent for the lot above described.

S. H. THOMPSON, *Register.*

No. 13165.] LAND OFFICE AT EDWARDSVILLE ILL.,
December 30, 1835.

It is hereby certified that, in pursuance of law, Thomas L. P. Neal, of Clinton County, Illinois, on this day purchased of the register of this office the lot or west half of the northwest quarter of section number fourteen, of township number nine north, in range number twelve west of the third principal meridian, containing eighty acres
109 and hundredths of an acre, at the rate of one dollar and twenty-five cents per acre, amounting to one hundred dollars cents, for which the said Thomas L. C. Neal has made payment in full as required by law.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said Thomas L. P. Neal shall be entitled to receive a patent for the lot above described.

S. H. THOMPSON, *Register.*

(Indorsed:) Filed April 14, 1881. J. A. Jones, clerk.

9.—*Copy register' check.*

No. 13164.]

Dec. 30, 1835. To John Winstanley, of St. Clair County, State of Illinois, for S. ½ NE. ¼ section No. 3, township No. 1 north, range No. 9 west of the third principal meridian, containing 84 $\frac{46}{100}$ acres, at $1.25 per acre.
$105.57.]

S. H. THOMPSON, *Register.*

AUDITOR'S OFFICE, ILLINOIS,
Springfield, September 15, 1879.

110 I, Thomas B. Needles, auditor of public accounts of the State of Illinois, certify that the foregoing is a full, true, and correct copy of a register's "check" now on file in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of my office the day and year above written.

[L. S.] T. B. NEEDLES,
Auditor P. A.

(Indorsed:) Filed April 14, 1881. J. A. Jones, clerk.

10.—*Copy of "certificate checks."*

No. 13163.]

Dec. 30, 1835. To John Arnett, of Morgan County, State of Illinois, for SE. ¼ NE. ¼ section No. 19, township No. 13 north, range No. 8 west of the third principal meridian, containing 40 acres, at $1.25 per acre.
$50.]

S. H. THOMPSON, *Register.*

No. 13164.]

Dec. 30, 1835. To John Winstanley, of St. Clair County, State of Illinois, for S. ½ NE. ¼ section No. 3, township No. 1 north, range No. 9 west, of the third principal meridian containing 84 $\frac{46}{100}$ acres, at $1.25 per acre.
$105.57.]

S. H. THOMPSON, *Register.*

111 No. 13165.]

Dec. 30, 1835. To Thomas L. P. Neal, of Clinton County, State of Illinois, for W. ½ NW. ¼ section No. 14, township No. 9 north, range No. 12 west of the third principal meridian, containing 80 acres, at $1.25 per acre.
$100.]

S. H. THOMPSON, *Register.*

AUDITOR'S OFFICE, ILLINOIS,
Springfield, February 16, 1881.

I, Charles P. Swigert, auditor of public accounts of the State of Illinois, do hereby certify that the annexed instrument is true, full, and correct copy of "certificate checks" No. 13163, 13164, & 13165 of land entered in the United States district land office at Edwardsville, Illinois, now on file in and forming part of the records of this office.

In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, the day and year first above written.

[L. S.] CHAS. P. SWIGERT,
Auditor Public Accounts.

(Indorsed:) Filed April 14, 1881. J. A. Jones, clerk.

112 11.—*Certified copy of Schlatter's patent.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 16, 1878.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed copy of patent in favor of William Schlatter, founded on Edwardsville, Illinois, final certificate No. 498, is a true and literal exemplification from the record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] J. A. WILLIAMSON,
Commissioner of General Land Office.

Final certificate No. 498.

The United States of America to all to whom these presents shall come, greeting:

Know ye that Wm. Schlatter, assignee of Ninian Edwards, having deposited in the General Land Office a certificate of the register of the land office at Edwardsville, Illinois, whereby it appears that full payment has been made for the west half of the northwest quarter of section
113 nine, in township two north, of range nine west, in the district of lands formerly subject to sale at Edwardsville, now Springfield, Illinois, containing eighty acres of the lands directed to be sold at Edwardsville, Illinois, by the act of Congress entitled "An act providing for the sale of the lands of the United States in the territory northwest of the Ohio and above the mouth of Kentucky River," and of the acts amendatory of the same, there is granted by the United States unto the said William Schlatter the tract of land above described, to have and to hold the said tracts of land with appurtenances unto the said William Schlatter, and to his heirs and assigns forever.

In testimony whereof I have caused the letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the fifteenth day of August, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States of America the ninety-sixth.

By the President: U. S. GRANT,
By J. PARRISH, *Sec'y.*

[L. S.] C. B. BOYNTON,
Recorder of the General Land Office.

Rec., vol. 9, page 244.

114 (Indorsed:) Filed Mar. 31, 1879. Charles Becker, clerk.
(Also indorsed:) Filed April 14, 1881. J. A. Jones, clerk.

12.—*Copy of warranty deed.*

This deed, made and entered into this twenty-fifth day of March, in the year of our Lord one thousand eight hundred and thirty-seven, between John Winstanley and Catherine, his wife, of the county of St. Clair and State of Illinois, of the first part, and William C. Anderson, of the county of St. Louis and State of Missouri, of the second part, witnesseth that the said John Winstanley and Catherine, his wife, parties of the first part, for and in consideration of the sum of nine hundred dollars in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, convey, and confirm unto the said party of the second part, his heirs and assigns, forever, the following-described piece or parcel of land, situate, lying, and being in the county of St. Clair and State of Illinois, and known and designated on the plat of said St. Clair County as being the
115 south half of the northeast quarter section number three, of township number one north, of range No. nine west, containing eighty-four and forty-six hundredths acres, together with all and singular the appurtenances thereunto belonging or in any wise appertaining; to have and to hold the above-described tract or parcel of land unto the said party of the second part, his heirs and assigns, forever.

And the said John Winstanley and Catherine, his wife, the aforesaid tract or parcel of land and premises unto said party of the second part, his heirs and assigns, against the claim or claims of all and every person whatsoever, do and will warrant and defend by these presents.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOHN WINSTANLEY. [SEAL.]
CATTA. WINSTANLEY. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN HAY.

STATE OF ILLINOIS,
St. Clair County, ss:

Be it remembered that on this 25th day of March, A. D. one
116 thousand eight hundred and thirty seven, before me, John Hay, clerk of the circuit court for and within the said county of St. Clair, personally came John Winstanley and Catherine, his wife, personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as having executed the same, and severally acknowledged the same to be their free act and deed for the purposes therein expressed. The said Catherine Winstanley being by me first made acquainted with the contents thereof, and examined separately and apart from her said husband, "Whether she executed the said deed, and relinquished her dower to the lands and tenements therein mentioned, voluntarily, freely, and without compulsion of her husband?" acknowledged and declared that she executed the said deed, and relinquished her dower in the said lands and tenements therein mentioned, voluntarily, freely, and without the compulsion of her said husband.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at my office in Belleville, the day and year above written.

[SEAL.] JOHN HAY.

117 Recorded this fifteenth of April, eighteen hundred and thirty-seven.

JOHN HAY, *Recorder.*

STATE OF ILLINOIS,
St. Clair County:

I, Charles Becker, clerk of the circuit court and ex-officio recorder in and for said county of St. Clair and State of Illinois, do certify the foregoing to be a true and correct copy of warranty deed from John Winstanley and wife to William C. Anderson, as the same appears of record in my office in book I, page 312, of said St. Clair County records. And I further certify that I am the custodian of said records.

In testimony whereof I hereunto set my hand and affix the seal of said court at office, in Belleville, Illinois, this 15th day of February, A. D. 1878.

[L. S.] CHARLES BECKER, *Clerk.*

(Indorsed:) Filed Mar. 31, 1879. Charles Becker, clerk.
(Also indorsed:) Filed April 14, 1881. J. A. Jones, clerk.

118 The defendant on his part gave in evidence the following documents:

First. Patent from the U. S. to defendant:

13.—*Certified copy of Simmons' patent.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 8, 1879.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed copy of patent in favor of James H. Simmons, founded on Springfield, Illinois, cash entry No. 29596, is a true and literal exemplification from the record in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] J. A. WILLIAMSON,
Commissioner of General Land Office.

Certificate No. 29596.

The United States of America to all to whom these presents shall come, greeting:

119 Whereas James H. Simmons, of Philadelphia County, Pennsylvania, has deposited in the General Land Office of the United States a certificate of the register of the land office at Springfield, Illinois, whereby it appears that full payment has been made by the said James H. Simmons, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands" for the south half of the northeast quarter of section three, in township one north, of range nine west of third principal meridian, in the district of lands subject to sale at Springfield, Illinois, containing eighty-four acres and forty-six hundredths of an acre, according to the official plat of the survey of the

said lands returned to the General Land Office by the surveyor-general, which said tract has been purchased by the said James H. Simmons:

Now, know ye that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said James H. Simmons and to his heirs the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and
120 appurtenances of whatsoever nature thereunto belonging unto the said James H. Simmons and to his heirs and assigns forever.

In testimony whereof I, Ulysses S. Grant, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twelfth day of June, in the year of our Lord one thousand eight hundred and seventy-one, and of the Independence of the United States the ninety-fifth.

By the President:

U. S. GRANT,
By J. PARRISH,
Secretary.

[L. S.] C. B. BOYNTON,
Recorder of the General Land Office.

Recorded, vol 57, page 433.
(Indorsed:) Filed April 14, 1881. J. A. Jones, clerk.

Second. Exemplification from Land Office of certificate of purchase & receiver's receipt, on which Simmons obtained patent No. 29596, marked C:

14.—*Copy of certificate of purchase & receiver's receipt to Simmons.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

121 *Washington, D. C., July* 8, 1879.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed copies of Springfield, Illinois, certificate of purchase and receiver's receipt No. 29596 are true and correct exemplifications from the files of this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] J. A. WILLIAMSON,
Commissioner of General Land Office.

No. 29596.] RECEIVER'S OFFICE AT SPRINGFIELD, ILLS.
February 27th, 1871.

Received from James H. Simmonds, of Philadelphia County, Penn'a, the sum of one hundred & five dollars and fifty-seven cennts, being in full for the south half of the northeast quarter of section No. three, in township No. one N., of range No. nine W., 3d P. P., containing eighty-four acres and forty-six hundreths, at $1.25 per acre.
$105.57.]

GEO. N. BLACK, *Receiver.*

122 No. 29596.] LAND OFFICE AT SPRINGFIELD, ILLINOIS,
February 27th, 1871.

It is hereby certified that, in pursuance of law, James H. Simmonds, Philapelphia County, State of Penn'a, on this day purchased of the register of this office the lot or south half of the northeast quarter of section No. three, in township No. one north, of range No. nine west of 3d P. M., containing eighty-four & $\frac{46}{100}$ acres, at the rate of one dollar and 25 cents per acre, amounting to one hundred & five dollars and 57 cents, for which the said James H. Simmons has made payment in full as required by law.

Now, therefore, be it known that on presentation of this certificate to the Commissioner of the General Land Office the said James H. Simmons shall be entitled to receive a patent for the lot above described.

WM. F. ELKIN, *Register*.

(Indorsed:) Filed April 14, 1881. J. A. Jones, clerk.

Third. The following exemplifications from the General Land Office, with the certificates:

123 15.—*Copy of entries from tract-book.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
May 8th, 1880.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed copies of cash entries No. 13164 by John Winstanley and No. 29596 by James H. Simmons are true and literal exemplifications from the tract-book of entries made at Edwardsville and Springfield land offices in the State of Illinois.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] J. A. WILLIAMSON,
Commissioner of General Land Office.

.... *Township No.* 1, *range No.* 9, *district of Edwardsville, Illinois.*

Description of tract.				Contents.		Rate per acre.		Purchase money.		Name of the purchaser.	Date of sale.	Number of receipt and certificate of purchase.	To whom patented.	Date of patent.	Where recorded.	
Part of section.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.						Volume.	Page.
S.½ NE.¼	3	1	9	84	46	1	25	105	57	James H. Simmons	Feb. 27th, 1871.	29596				

124

.... *Township No.* 2, *range No.* 9, *district of* .

Description of tract.				Contents.		Rate per acre.		Purchase money.		Name of the purchaser.	Date of sale.	Number of receipt and certificate of purchase.	To whom patented.	Date of patent.	Where recorded.	
Part of section.	Section.	Township.	Range.	Acres.	100ths.	Dollars.	Cents.	Dollars.	Cents.						Volume.	Page.
W.½ NW.¼	9	2	9	80	.....	1	25	100	.....	John Winstanley	Dec. 30th, 1835.	13164				

(Indorsed:) Filed April 14, 1881. J. A. Jones, clerk.

Fourth. The following certified exemplifications from the Gen. Land Office U. S.:

16.—*Copy of Winstanley's cert. of purchase & receiver's receipt & affidavit.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 8, 1879.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed copies of Edwardsville, Illinois, certificate of purchase and receiver's receipt No. 13164, and the affidavit in connection therewith, are true and correct exemplifications from the files of this office.

In testimony whereof I have hereunto subscribed my name
125 and caused the seal of this office to be affixed at the city of Washington the day and year above written.

[L. S.] J. A. WILLIAMSON,
Commissioner of General Land Office.

No. 13164.] LAND OFFICE AT EDWARDSVILLE, ILL.,
December 30, 1835.

It is hereby certified that, in pursuance of law, John Winstanley, of St. Clair County, Illinois, on this day purchased of the register of this office the lot or west half of the northwest quarter of section number nine, of township number two north, in range number nine west of the third principal meridian, containing eighty acres and hundredths of an acre, at the rate of one dollar and twenty-five cents per acre, amounting to one hundred dollars cents, for which the said John Winstanley has made payment in full as required by law.

Now, therefore, be it known that on presentation of this certificate to the Commissioner of the General Land Office the said John Winstanley shall be entitled to receive a patent for the lot above described.

S. H. THOMPSON, *Register.*

126 No. 13164.] RECEIVER'S OFFICE,
EDWARDSVILLE, ILLINOIS,
December 30, 1835.

Received from John Winstanly, of St. Clair County, Ills., the sum of one hundred dollars and cents, being in full for the west half of the northwest quarter of section No. nine, township No. two north, range No. nine west of the third principal meridian, containing eighty acres and $\frac{}{100}$, at the rate of $1.25 per acre.

75 B. U. States.
$100. 25 Specie.
$100

B. F. EDWARDS,
Receiver,
By WM. H. RIDER.

I do solemnly swear that since the first day of January, 1834, viz, on or about the 28th day of December, 1835, I personally inspected the tract of land designated in the annexed application, to wit, the west half of the northwest quarter of section *N.* nine, in township *N.* two north, range *N.* nine west, of the third principal meridian, in the district of lands subject to sale, at Edwardsville, Illinois, and that there

was not, at that time, any person residing thereon or cultivating the same, and I do not believe that any pre-emption right exists thereto, either under the act of 20th May, 1830, or that of 19th June, 1834.

JAMES EULES.

127 The above-named James Eules came before me, a notary public in and for the county of Madison and State of Illinois, duly commissioned and qualified, and legally authorized to administer oaths, and made and subscribed the foregoing affidavit this 30th day of December, 1835.

In testimony whereof I, the said notary, have hereunto set my hand and affixed my notarial seal at Edwardsville the day and year above written.

[SEAL.] J. GILLEPIRER.

The within affidavit is a credible witness.

S. H. THOMPSON, *Reg.*

(Indorsed:) Filed April 14, 1881. J. A. Jones, clerk.

Fifth. Exemplifications of plats certified from Gen. Land Office, U. S.

17.—*Copy of plats.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
July 9th, 1879.

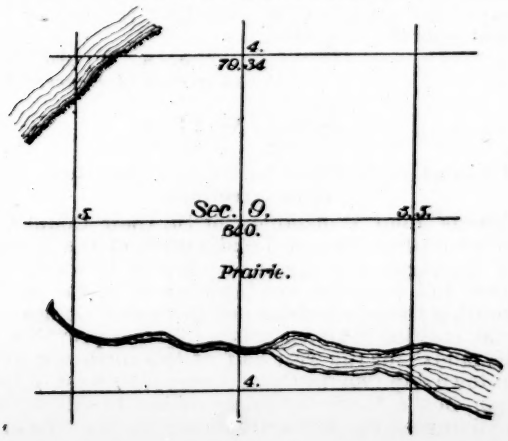
I, J. A. Williamson, Commissioner of the General Land Office,
128 do hereby certify that the annexed copy of plat of sec. 3, t'p 1 N., range 9 W., and sec. 9, t'p 2 N., range 9 W., 3d P. M. Ill., are true and literal exemplification' from the official plat in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

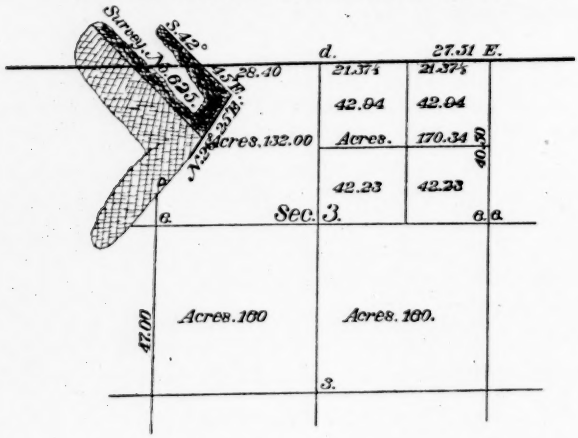
[L. S.] J. A. WILLIAMSON,
Commissioner General Land Office.

Township No. 1 N., range No. 9 W. of 3rd merid.

T. 2 North. R. 9. West of 3d Mer.



Township No. 1 N. Range No. 9 W. of 3d Mer'd.



129 (Indorsed:) Filed April 14, 1881.

J. A. JONES, *Clerk.*

Sixth. Exemplifications of patent to Winstanley.

18.—*Copy of patent to Winstanley.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 8, 1879.

I, J. A. Williamson, Commissioner of the General Land Office, do hereby certify that the annexed copy of patent in favor of John Winstanley, founded on Edwardsville, Illinois, cash entry No. 13164, is a true and literal exemplification from the record in this office.

In testimony whereof I have hereunto subscribed my name and cause the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.]

J. A. WILLIAMSON,
Commissioner of General Land Office.

Certificate No. 13164.

The United States of America to all to whom these presents shall come, greeting:

130 Whereas John Winstanley, of St. Clair County, Illinois, has deposited in the General Land Office of the United States a certificate of the register of the land office at Edwardsville, whereby it appears that full payment has been made by the said John Winstanley, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands" for the west half of the northwest quarter of section nine, in township two north, of range nine west of the third principal meridian, in the district of lands subject to sale at Edwardsville, Illinois, containing eighty acres according to the official plat of the

survey of the said lands returned to the General Land Office by the surveyor-general, which said tract has been purchased by the said John Winstanley:

Now, know ye, that the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said John Winstanley and to his heirs the said tract above described; to have and to hold the same, together with all the rights, privileges, immunities, and appurte-
131 nances, of whatsoever nature thereunto belonging, unto the said John Winstanley, and to his heirs and assigns forever.

In testimony whereof I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the second day of December, in the year of our Lord one thousand eight hundred and thirty-nine, and of the Independence of the United States the sixty-fourth.

By the President.

MARTIN VAN BUREN,
By M. VAN BUREN, JR.,
Secretary.

H. M. GARLAND,
Recorder of the General Land Office.

Recorded vol. 27, page 32.

(Indorsed:) Filed April 14, 1881. J. A. Jones, clerk.

The auditor of the State of Illinois, being the custodian of the same, produced in court the book, the register of receiver's receipts for local land office, Edwardsville, Ill., and the defendant read therefrom
132 in order the register of receipts issued in & during the month of December, A. D. 1835, as follows:

19.—*Copy from register of receiver's receipts.*

Date of receipt.	Number of receipt.	Land by whom purchased.		Tract purchased.			Quantity.		Price per acre.		Amount of purchase money.	
		Name.	Residence.	Section or part of—	Township.	Range.	Acres.	100'dr'ths.	Dollars.	Cents.	Dollars.	Cents.
1835.												
December 30th	13129	Joseph Kinnear	Pickaway, Ohio	W. ½ 13	8	3	320	....	....	....	400	00
	13130	Same	" "	E. ½ 14	8	3	320	....	....	....	400	00
	13131	Jefferson Crull	Greene Co., Ill's	NE. ¼ NE. ¼ 8	7	13	40	....	....	....	50	00
	13132	Thomas Stirtwell	Macoupin "	NW. ¼ SW. ¼ 34	9	9	40	....	....	....	50	00
	13133	John Davidson	Greene, "	NE. ¼ SW. ¼ 27	11	11	40	....	....	....	50	00
	13134	Samuel Craft Davis & Joshua Reed Stanford.	St. Louis, Mo	NW. ¼ 18	4	3	154	26	....	....	192	82
	13135	Isaac Ostrom	Morgan Co., Ill's	SE. ¼ NE. ¼ 9	12	9	40	00	....	....	50	00
	13136	Cabel Stone Madison & Samuel Keller	Macoupin " "	E. ½ SW. ¼ 29	10	9	80	00	....	....	100	00
	13137	Same	" " "	E. ½ SE. ¼ 4	9	9	80	00	....	....	100	00
	13138	Same	" " "	W. ½ SW. ¼ 31	10	9	79	22	....	....	99	02
	13139	Same	" " "	E. ½ NE. ¼ 6	9	9	78	32	....	....	98	53
	13140	Isaac Allen	Greene Co., Ill's	SW. ¼ SE. ¼ 27	10	10	40	00	....	....	50	00
	13141	Samuel Cummings	Macoupin, "	N. ½ NE. ¼ 5	12	8	78	88	....	....	98	60
	13142	Samuel Norriss	Greene, "	NE. ¼ SE. ¼ 29	10	9	40	00	....	....	50	00
	13143	Hiram Leroy Walker	" "	SW. ¼ SE. ¼ 20	10	9	40	00	....	....	50	00
	13144	Samuel Spruance	" "	SE. ¼ NE. ¼ 20	10	10	40	00	1	25	50	00
	13145	Benjamin Spruance	" "	W. ½ NW. ¼ 21	10	10	80	00	....	....	100	00
	13146	Isaac Ostrom	Morgan, "	SW. ¼ NE. ¼ 9	12	9	40	00	....	....	50	00
	13147	Samuel Canaday	Greene, "	E. ½ NW. ¼ 21	10	10	80	00	....	....	100	00
Pre-emption act 1834	13148	Henry Phillips	" "	W. ½ NW. ¼ 27	11	10	80	00	....	....	100	00
	13149	Williams Thomas Givens	Morgan, "	SE. ¼ NE. ¼ 8	13	8	40	00	....	....	50	00
	13150	Henry Davidson	Greene, "	E. ½ SE. ¼ 5	10	10	80	00	....	....	100	00
	13151	Same	" "	SE. ¼ SW. ¼ 3	10	10	40	00	....	....	50	00
	13152	John Moore	" "	W. ½ SE. ¼ 34	13	13	80	00	....	....	100	00
	13153	Daniel Busby	St. Louis, Mo	NW. ¼ SW. ¼ 17	8	7	40	00	....	....	50	00
	13154	Middleton Perry	Greene, Ill's	NE. ¼ SW. ¼ 7	9	10	38	98	....	....	48	73
	13155	Same	" "	SW. ¼ SW. ¼ 4	9	10	40	00	....	....	50	00
	13156	William Perry Witt	" "	NE. ¼ SW. ¼ 25	10	11	40	00	....	....	50	00
	13157	David Bentley	Madison, "	W. ½ SW. ¼ 23	7	7	80	00	....	....	100	00
	13158	John C. Johnston	Bond, "	NE. ¼ SE. ¼ 30	9	7	40	00	....	....	50	00
	13159	Silas Renfro	Greene, "	SE. ¼ NE. ¼ 4	12	12	37	62	....	....	47	03
	13160	Samuel Colvin	" "	NW. ¼ 31	11	10	160	52	....	....	200	65

Pre-emption act 1834	13161	Samuel Stubbs	"	"	W. ½ SW. ¼ 24	9	11	80	00			100	00
	13162	Sampson Fanning	Morgan,	"	W. ½ SW. ¼ 19	13	9	101	44			126	80
	13163	John Arnett	"	"	SE. ¼ NE. ¼ 19	13	8	40	00			50	00
	13164	John Winkanley	St. Clair,	"	W. ½ NW. ¼ 9	2	9	80	00			100	00
	13165	Thomas L. P. Neal	Clinton,	"	W. ½ NW. ¼ 14	9	12	80	00			100	00
Pre-emption act 1834	13166	Andrew Thompson	Morgan,	"	W. ½ NE. ¼ 36	13	9	80	00			100	00
	13167	Wyatt Wardup	Macoupin,	"	E. ½ SW. ¼ 33	12	7	80	00			100	00

133 (Indorsed:) Filed April 14, 1881. J. A. Jones, clerk.

The said auditor, being custodian as aforesaid, also produced in court the quarterly report of said receiver said local land , embracing the date Dec. 30th, 1835, and read in evidence all the entries of that day, as follows:

20.—*Copy from quarterly acc't of receiver.*

Date of purchase.	Number of receiver's receipt.	By whom purchased.	Tract purchased.			Quantity.		Price per acre.		Amount received in forfeited land stock.		Amount received in military scrip.		Amount of purchase money.	
			Section or part of—	Township.	Range.	Acres.	100d'ths.	Dolls.	Cents.	Dolls.	Cents.	Dolls.	Cts.	Dollars.	Cents.
1835.															
December 30.	13129	Joseph Kinnear	W. ½ 13	8	3	320	00							400	00
	13130	Same	E. ½ 14	8	3	320	00							400	00
	13131	Jefferson Crull	NE. ¼ NE. ¼ 8	7	13	40	00							50	00
	13132	Thomas Stirtivil	NW. ¼ SW. ¼ 34	9	9	40	"	1	25					50	00
	13133	John Davidson	NE. ¼ SE. ¼ 27	11	11	40	"							50	00
	13134	Samuel Craft Davis & John Reed Stanford	NW. ¼ 18	4	3	154	26							192	82
	13135	Isaac Ostrum	SE. ¼ NE. ¼ 9	12	9	40	00							50	00
	13136	Caleb Stone & Samuel Keller	E. ½ SW. ¼ 29	10	9	80	"							100	00
	13137	Same	E. ½ SE. ¼ 4	9	9	80	"							100	00
	13138	Same	W. ½ SW. ¼ 31	10	9	79	22							99	02
	13139	Same	E. ½ NE. ¼ 6	9	9	78	82							98	53
	13140	Isaac Allen	SW. ¼ SE. ¼ 27	10	10	40	00							50	00
	13141	Samuel Cummings	N. ½ NE. ¼ 5	12	8	78	88							98	60
	13142	Samuel Norriss	NE. ¼ SE. ¼ 29	10	9	40	00							50	00
	13143	Hiram Leroy Walker	SW. ¼ SE. ¼ 20	10	9	40	00							50	00
	13144	Samuel Spruance	SE. ¼ NE. ¼ 20	10	10	40	00							50	00
	13145	Benjamin Spruance	W. ½ NW. ¼ 21	10	10	80	00							100	00
	13146	Isaac Ostrom	SW. ¼ NE. ¼ 9	12	9	40	00							50	00
	13147	James Canaday	E. ½ NW. ¼ 21	10	10	80	00							100	00
	13148	Henry Phillips	W. ½ NW. ¼ 27	11	10	80	00							100	00
	13149	William Thomas Givens	SE. ¼ NE. ¼ 8	13	8	40	00							50	00
	13150	Henry Davidson	E. ½ SE. ¼ 5	10	10	80	00							100	00
	13151	Same	SE. ¼ SW. ¼ 3	10	10	40	00							50	00
	13152	John Moore	W. ½ SE. ¼ 34	13	13	80	00							100	00
	13153	David Busby	NW. ¼ SW. ¼ 17	8	7	40	00							50	00
	13154	Middleton Perry	NE. ¼ SW. ¼ 7	9	10	38	98							48	73
	13155	Same	SW. ¼ SW. ¼ 4	9	10	40	00							50	00
	13156	William Perry Witt	NE. ¼ SW. ¼ 25	10	11	40	00							50	00
	13157	David Bentley	W. ½ SW. ¼ 23	7	7	80	00							100	00
	13158	John C. Johnston	NE. ¼ SE. ¼ 30	9	7	40	00							50	00
	13159	Silas Renfro	SE. ¼ NE. ¼ 4	12	12	37	62							47	03
	13160	Samuel Colver	NW. ¼ 31	11	10	166	52							200	65
	13161	Samuel Stubbs	W. ½ SW. ¼ 24	9	11	80	00							100	00
	13162	Sampson Fanning	E. ½ SW. ¼ 19	13	9	101	44							126	80
	13163	John Arnett	SE. ¼ NE. ¼ 19	13	8	40	00							50	00
	13164	John Winskinsley	W. ½ NW. ¼ 9	2	9	80	00							100	00
	13165	Thomas L. P. Neal	W. ½ NW. ¼ 14	9	12	80	00							100	00
	13166	Andrew Thompson	W. ½ NE. ¼ 36	13	9	80	00							100	00
	13167	Wyatt Wardup	E. ½ SW. ¼ 33	12	7	80	00							10	00

134 (Indorsed:) Filed April 14, 1881. J. A. Jones, clerk.

The defendant also then gave in evidence the record in the ejectment suit of James H. Simmons vs. Jos. Ogle, remaining in this court.

21.—*Copy of record in ejectment suit. A placita.*

Pleas in the circuit court of the United States for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, district judge of said district, and in the absence of the honorable Thomas Drummond, presiding judge of said court and judge of the seventh judicial circuit pro tempore, sole judge of said court, on Thursday, the 17th day of January, at the January term of said court, in the year our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and second year.

J. A. JONES, *Clerk.*

135 JAMES H. SIMMONS *vs.* DAVID JONES, JOHN CONROY, AND JOSEPH Ogle. } Ejectment.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

James H. Simmons, a resident of the State of Pennsylvania, plaintiff, puts in his place Messrs. Noetling and Halbert, his attorneys, against David Jones, John Conroy, and Joseph Ogle, residents of the southern district of Illinois, of a plea of ejectment.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the 12th day of December, in the year of our Lord one thousand eight hundred and seventy-seven, there was issued out of the office of the clerk of said court a writ of summons in said cause, directed to the marshal of said district to execute, which said summons, together with the return of the marshal thereon, is in the words and figures following, to wit:

B. *Summons.*

Circuit court of the United States of America, southern district of Illinois, ss.

136 The United States of America to the marshal of the southern district of Illinois, greeting:

We command you that you summon David Jones, John Conroy, and Joseph Ogle, if to be found in your district, to be and appear before our judges of our circuit court of the United States for the southern district of Illinois on the first day of the next term thereof, to be held at Springfield, in the district aforesaid, on the 1st Monday of January, A. D. 1878, to answer unto James H. Simmons of a plea of trespass and ejectment, wherein the said plaintiff sues to recover of the said defendant that parcel of land situated in the county of St. Clair and State of Illinois, in the said southern district of Illinois, which described as follows, to wit: The south half of the northeast quarter of section three (3), township one (1) north, of range nine (9), west of the third principal meridian, in the district of lands subject to sale at Springfield, Illinois,

containing eighty-four acres and $\frac{46}{100}$ of an acre according to the official plat of the survey of said lands returned to General Land Office by the surveyor-general (which said premises exceed in value the sum
137 of five hundred dollars), and in which action the said plaintiff claims title to said premises in fee-simple, as well as the sum of five hundred dollars for his damage, as he alleges, by reason of unlawfully withholding the possession of said premises since December 1st, 1877, by the defendants, and have you then and there this writ, and make return thereon in what manner you execute the same.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this twelfth day of December, in the year of our Lord one thousand eight hundred and seventy-seven, and of our Independence the 102d year.

[L. S.] J. A. JONES, *Clerk.*

Marshal's return.

I hereby appoint H. G. Webber my special deputy to execute this writ.

Dec. 12, 1877.

E. R. ROE, *U. S. Mar.*

STATE OF ILLINOIS,
St. Clair County, ss:

I have on this 26th day of December, A. D. 1877, served the within summons by delivering a true copy of the same to each of the within-named David Jones, John Conroy, and Joseph Ogle, and by read-
138 ing this writ to each of the above-named parties, who are the same persons within named as defendants. The said Jones and Conroy are in possession of the within-described premises, and said Ogle claims the title to said premises.

HERMAN G. WEBER,
Sp'l D'p'ty.

Herman G. Weber, being duly sworn, on his oath states that he is the person specially deputized by the United States marshal for the southern district of Illinois hereon to execute this writ, and that the foregoing return made by him is true and correct as stated.

HERM. G. WEBER, *Deputy.*

Subscribed and sworn to before me this 8th day of January, 1878.

[L. S.] HENRY M. NEEDLES, *N. P.*

(Indorsed:) Filed January 17, A. D. 1878. J. A. Jones, clerk.

And afterwards, to wit, on the said 17th day of January, in the year last aforesaid, came the said plaintiff, by his attorneys, and filed in said clerk's office his narrative in said cause; which said narrative is in the words and figures following, to wit:

139 C. *Narrative.*

In circuit court United States, January term, A. D. 1878.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

James H. Simmons, the plaintiff in this suit, who is a citizen of the

State of Pennsylvania, one of the United States of America, by Noetling & Halbert and Dale & Burnett, his attorneys, complains of David Jones, John Conroy, and David Ogle, the defendants, who are citizens and inhabitants of the State of Illinois, one of the United States of America, of a plea. Wherefore they, the said defendants, with force and arms, &c., entered into the following-described premises: For that heretofore, to wit, on the first day of December, A. D. 1877, the said plaintiff was possessed of certain premises situated in the county of St. Clair, in the State of Illinois, and described as follows, to wit: The south half of the northeast quarter of section three, in township one north, of range nine west of the third principal meridian, in the district of lands subject to sale at Springfield, Illinois, containing eighty-four acres and forty-six hundredths of an acre, according to the official plat of the survey of said lands returned to the General Land Office
140 by the surveyor-general; which said premises exceed in value the sum of five hundred dollars; and being so possessed thereof, the said defendants afterwards, to wit, on the day and year last aforesaid, entered into such premises, and that they unlawfully withhold from the said plaintiff the possession thereof; and the said plaintiff avers that he claims title to said premises in fee. Wherefore said plaintiff says that he is injured and has sustained damages to a large amount, to wit, five hundred dollars, and therefore he brings suit, &c.

NOETLING & HALBERT,
DALE & BURNETT,
Pl'ff's Attorneys.

(Indorsed:) Filed December 12, 1877. J. A. Jones, clerk.

And afterwards, to wit, on Wednesday the 16th day of January, at the January term of said court, in the year of our Lord one thousand eight hundred and seventy-eight, the following proceedings were had in said court and entered of record in said cause, to wit:

141 D. *Rule to plead.*

JAMES H. SIMMONS *vs.* DAVID JONES ET AL. } Ejectment.

On motion of plaintiff by Messrs. Dale and Burnett, his attorneys, the defendants having been regularly served with process are ruled to plead herein by to-morrow morning.

And afterwards, to wit, on Thursday the 17th day of January, in term and year last aforesaid, the following further proceedings were had in said court, and entered of record in said cause, to wit:

E. *Judgment against defendant.*

JAMES H. SIMMONS *v.* DAVID JONES, JOHN CONROY, AND JOSEPH OGLE. } Ejectment.

This day comes again the plaintiff, by Messrs. Dale and Burnett, his attorneys, and the said defendants having failed to enter their appear-

ance and plead pursuant to the rule of this court herein entered, were three times solemnly called, and came not, but made default.

142 It is therefore considered by the court that the defendants are guilty of unlawfully withholding from the plaintiff the possession of real estate and premises in his declaration described, to wit, the south half of the northeast quarter of section three (3), in township one (1) north, of range nine (9) west of the third principal meridian, in the district of lands subject to sale at Springfield, Illinois, containing eighty-four acres and forty-six hundredths of an acre, according to the official plat of the survey of said lands returned to the General Land Office by the surveyor-general, situated in the county of St. Clair and State of Illinios, and to which the plaintiff is entitled in fee-simple.

It is therefore ordered and adjudged by the court that the plaintiff recover of the defendants possession of the said premises according to the force and effect of said recovery, and that a writ of possession issue therefor.

It is also ordered that the plaintiff recover of the defendants the sum of one cent damages, together with the sum of thirty-four dollars and ninety cents, his costs and charges by him about his suit in this

143 behalf expended, and that execution issue therefor.

And afterwards, to wit, on the 16th day of January, in the year of our Lord one thousand eight hundred and seventy-nine, there was issued out of said clerk's office a writ of habere facias in said cause, directed to the marshal of said district to execute; which said writ of habere facias, together with the return of the marshal thereon, is in the words and figures following, to wit:

F. *Habere facias.*

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

The United States of America to the marshal of the southern district of Illinois, greeting:

Whereas James H. Simmons, plaintiff, hath lately in our circuit court of the United States for the southern district of Illinois, by the judgment of the said court, recovered against David Jones, John Conroy, and Joseph Ogle, defendants, the following-described real estate and premises, to wit, the south half of northeast quarter of section three (3), in township one (1) north, of range nine (9) west of the third

144 principal meridian, in the district of lands subject to sale at Springfield, Illinois, containing eighty-four acres and forty-six hundredths of an acre according to the official plat of the survey of said lands, returned to the General Land Office by the surveyor-general, situated in the county of St. Clair and State of Illinois, which said premises have been and still are unjustly withheld from the said James H. Simmons by the said David Jones, John Conroy, and Joseph Ogle, whereof they are convicted, as appears to us of record, and forasmuch as it is adjudged in the said court that the said plaintiff have execution upon his said judgment against the said defendant according to the force, form, and effect of his said recovery.

Therefore we command you that without delay you deliver to the said James H. Simmons possession of the premises so recovered with the appurtenances; and that you certify hereon to our said court, in ninety days from the date hereof, in what manner you shall have executed this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid,
145 this sixteenth day of January, in the year of our Lord one thousand eight hundred and seventy-nine, and of our Independence the one hundred & third year.

[L. S.] J. A. JONES, *Clerk.*

Marshal' return.

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

I have appointed and by these presents do constitute John H. Seifert my true and lawful deputy, to execute the annexed writ, James H. Simmons vs. David Jones et al., and to make return of the execution thereof according to law.

E. R. ROE, *U. S. Marshal.*

I have duly executed the within writ this 21st day of January, A. D. 1879, by reading the same to the within-named Joseph Ogle and David Jones, by putting the said Joseph Ogle & David Jones out of possession of the within-described premises, & by putting the said James H. Simmons in possession of the within-described premises as by said writ I am directed. The within-named John Conroy not found & not found in possession of any of the within-described premises.

JOHN H. SEIFERT,
Special Deputy for E. R. Roe, U. S. Marshal.

146 (Indorsed:) Filed February 13th, A. D. 1879. J. A. Jones, clerk.

I, Samuel H. Treat, judge of the district court of the United States for the southern district of Illinois, and sitting as judge of the circuit court of said district in said cause, do hereby certify that the forego ing contains all the evidence introduced on the hearing of said cause, except the depositions, and the same is hereby made a part of the record in said suit.

S. H. TREAT, *Judge.* [L. S.]

(Indorsed:) Filed April 14, 1881. J. A. Jones, clerk.

And afterwards, to wit, on said 14th day of April, in the year of our Lord one thousand eight hundred and eighty-one, came the parties, by their solicitors, and filed their stipulation in said clerk's office in said cause; which said stipulation is in the words and figures following, to wit:

147 *Stipulation.*

In the circuit court of the United States for the southern district of Illinois.

JOSEPH OGLE
vs.
JAMES H. SIMMONS. } In chancery. Bill for relief.

It is hereby stipulated between the counsel for complainant and defendant in said cause that on the trial of said cause the following facts shall be considered as proved, viz: That "the register's books of en-

tries allowed on the 30th December, 1835, has a note, in pencil, to the effect that No. 13164 is changed to the W. ½ of NW. ¼ sec. 9, tp. 2 N., R. 9 W., 3rd P. M."

F. ... McCONAUGHY,
Of Counsel for Simmons.
JAS. L. D. MORRISON,
Of Counsel for Joseph Ogle.

(Indorsed:) Filed April 14, 1881. J. A. Jones, clerk.

And afterwards, to wit, on said 14th day of April, at the January term of said court, in the year last aforesaid, the following further proceedings were had in said court and entered of record in said cause, to wit:

148

Decree.

JOSEPH OGLE
v.
JAMES H. SIMMONS. } In chancery.

And now, on this day, this cause came on to be heard, and was argued by counsel, and the court having heard and examined the pleadings, exhibits, evidence, and argument of counsel, and being now sufficiently advised, doth order, adjudge, and decree that the said defendant, James H. Simmons, has held and still holds in trust for the said complainant, Joseph Ogle, in manner and form as charged in said bill, the legal title to and possession of the following-described tract of land, situated in the county of St. Clair and State of Illinois, known, designated, described: The south half of the northeast quarter of section three (3), in township one (1) north, of range nine (9) west of the third principal meridian; and that said Joseph Ogle has the equitable title thereto, and has the right to have the possession of said tract of land and also a right to the rents and profits of said tract of land since the recovery of the possession thereof by the said Simmons under and by virtue of said writ of ejectment.

149

It is therefore ordered, adjudged, and decreed further that the said James H. Simmons convey, within thirty days from the rendition of this decree, to said Joseph Ogle, his heirs or assigns, said south half of the northeast quarter of section three, in township one north, of range nine west of 3rd P. M.; and that in default of his compliance with this order that the master in chancery of this court execute such conveyance; that upon the making of said deed that the said Simmons deliver forthwith the possession of said tract of land to the said Ogle, and in default that the said Simmons be held to be in contempt of this court, and that the marshal of this district put the said Ogle in possession thereof. It is further ordered that the said Simmons, within said thirty days, account with and pay over to the said Ogle, his heirs, executors, or administrators, the rents and profits of said land since he recovered the possession thereof as aforesaid; and that in default of his doing so, that it be referred to the master in chancery of this court to take an account of and report to this court the amount of such rents and profits.

150

It is further ordered that in the event of the appeal of this cause to the Supreme Court that Thomas Winstanly be, and he is hereby, appointed receiver, to whom shall be paid all rents for the past and for the future arising from the use of said tract of land, and with authority

to rent out the same, and to hold all such rents to abide the further order of this court; and that each party pay the costs made by him in this cause.

And thereupon the defendant prays an appeal to the Supreme Court of the United States, which is allowed on his entering into bond to the complainant in the penalty of three hundred dollars, conditioned as the law directs, within sixty days from this date, and said appeal, when so perfected, to operate as a supersedeas.

And afterwards, to wit, on the 13th day of June, in the year last aforesaid, came the defendant and filed in said clerk's office his appeal bond in said cause; which said appeal bond is in the words and figures following, to wit:

151 *Appeal bond.*

Supreme Court of the United States.

JOSEPH OGLE
v.
JAMES H. SIMMONS. } In chancery.

Know all men by these presents that we, James H. Simmons, as principal, and Frederick H. Pieper, as sureties, are held and firmly bound unto Joseph Ogle in the sum of three hundred dollars, to be paid to the said Joseph Ogle, his executors, or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 11th day of June, A. D. 1881.

Whereas the above-named James H. Simmons hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled cause by the circuit court of the United States for the southern district of Illinois: Now, therefore, the condition of this obligation is such that if the above-named
152 James H. Simmons shall prosecute his said appeal to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JAS. H. SIMMONS. [SEAL.]
F. H. PIEPER. [SEAL.]

Sealed and delivered in the presence of—
GEORGE RUSSELL.

CITY OF PHILADELPHIA,
State of Pennsylvania:

Personally appeared before me James H. Simmons, personally known to me to be the person indicated in above bond, and acknowledged the same to be his act and deed for the purposes therein set forth. May 10th, 1881.

[L. S.] GEORGE RUSSELL.

STATE OF ILLINOIS,
Belleville, St. Clair Co.:

Personally appeared before me Frederick H. Pieper, personally known to me to be the person indicated in above bond, and acknowledged the

same to be his act and deed for the purposes therein set forth. June 11th, 1881.

[L. S.] ALBERT G. BADGLEY,
Notary Public.

153 Approved.

S. H. TREAT,
District Judge.

(Indorsed:) Filed June 13, 1881. J. A. Jones, clerk.

154 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Southern District of Illinois, in Circuit Court, ss:

I, John A. Jones, clerk of the circuit court of the United States for said southern district of Illinois, do hereby certify that the foregoing is a true, perfect, and complete copy of the papers filed and the proceedings thereon had in a certain cause lately pending in said court, wherein Joseph Ogle was complainant, and James H. Simmons was defendant, as fully as the same appear on file and of record in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court at Springfield, in said district, this 25th day of August, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and sixth year.

[SEAL.] J. A. JONES, *Clerk.*

(Indorsement on cover:) No. 957. James H. Simmons, appellant, vs. Joseph Ogle. S. Illinois C. C. U. S. Filed 6th October, 1881.

SUPREME COURT, U.S.
FILED
JAN 7 1882

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1881.

No. 957.

JAMES H. SIMMONS,
APPELLANT,

—vs.—

JOSEPH OGLE.

Appeal from the United States Circuit Court for the Southern District of Illinois.

Argument and Brief of
ROBERT A. HALBERT and
FRANKLIN A. McCONAUGHY,
For the Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1881.

No. 957.

JAMES H. SIMMONS,
APPELLANT,

—*vs.*—

JOSEPH OGLE.

Appeal from the United States Circuit Court for the Southern District of Illinois.

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IN THE

SUPREME COURT OF THE UNITED STATES.

No. 957.

OCTOBER TERM, 1881.

JAMES H. SIMMONS,
APPELLANT,
—vs.—
JOSEPH OGLE.

Appeal from the Circuit Court of the United States for the Southern District of Illinois.

Brief of Robert A. Halbert and Franklin A. McConaughy for the Appellant.

STATEMENT OF THE CASE.

I. This was a suit in equity, commenced to the April Term, A. D. 1879, of the Circuit Court of St. Clair County, State of Illinois, at which Term said suit was removed by the defendant to the Circuit Court of the United States for the Southern District of Illinois.

II. The bill in substance alleges that one John Winstanley, on the thirtieth day of December, A. D. 1835, made an application in the form required by the regulations governing the Local Land Offices in the State of Illinois, to the Register of the United States Land Office at Edwardsville, Illinois, to purchase from the United

States the south half of the north-east quarter of Section 3, in Township 1 North, Range 9 West, in St. Clair County, Illinois. The said tract of land being then unsold and the property of the United States, subject to sale. That said tract of land was then purchased and paid for by the said Winstanley, at the price of one dollar and twenty-five cents an acre. That at the time of said sale the land officers of the United States inscribed upon said subdivision and said township certificate the figures 13,164, which was the number of said application, and which remained so inscribed until the year 1871, when they were erased by parties unknown. That these were matters of public record in said land office and gave notice to the defendant, James H. Simmons, that the said John Winstanley had purchased and paid for said land, and that he or his assignees were seized of an equitable right in said land. That the United States could not again legally or equitably sell said tract of land to another. That the original certificate of entry No. 13,164 was deposited by the land officers of Edwardsville, in the General Land Office at Washington and a duplicate register's certificate given to the said John Winstanley at the time he purchased said land. That by conveyances from the said Winstanley, the said title vested in the complainant, Joseph Ogle, that in 1856, the said Ogle took possession of said land, and so remained prior to the year 1871, and paid all the taxes levied thereon since the year 1851; that in the year 1871, James H. Simmons was allowed to purchase the said land a second time from the United States at the land office located at Springfield, Illinois, and upon such subsequent purchase by Simmons, a patent was issued to him dated June 12th, 1871, at which time

the said Ogle was in the actual, visible, notorious, adverse possession of said land; that it was falsely and fraudulently pretended by the said Simmons, that the said John Winstanley did not purchase the said south half of the north-east quarter of section 3, town 1 north, range 9 west, at any time prior to the purchase of Simmons, but that the said Winstanley on the 30th day of December, 1835 purchased from the United States, the west half of the north-west quarter of section 9, township 2 north, range 9 west, and that the said purchase money of $105.87 paid into the land office on the 30th of December, 1835, was in consideration of said last mentioned land.

Whereas, complainant distinctly charges, that the said west half of the north-west quarter of section 9, township 2 north, range 9 west, contains but eighty (80) acres, the purchase money for which was but $100., whilst the south half of the north-east quarter of section 3, township 1 north, of range 9 west, contains eighty-four and forty hundredths acres (84.40), the purchase money for which was the sum of $105, the amount of money credited as paid upon the land office book as the land sold to John Winstanley on the 30th of December, 1835. That the said north-west quarter of section 9, town 2 north, range 9 west, had been sold on the 8th day of May, 1872, to Ninian Edwards, who assigned his certificate of purchase to one William Schlotter, which fact was a record in the land office in Springfield, at the time of the entry of Simmons; that a patent for the said west half of the north-west quarter of section 9, town 2, dated August 15th, 1871, was issued to the said William Schlotter. That said Simmons proceeded against the complainant and his tenants under him in ejectment for the land in contro-

versy in the Circuit Court of the United States for the Southern District of Illinois, and at the January Term, 1878, thereof, recovered a judgment by default against the complainant for said land. That complainant was advised by counsel that his equitable defence would not avail him in a United States Court against the patent issued to James H. Simmons, and that his only remedy was in a Court of Equity. That Simmons, under said judgment evicted the complainant.

The bill further alleges that Simmons is a resident of the City of Philadelphia and never was familiar with the public lands of Illinois, and more particularly in the county of St. Clair, and that the said Simmons conspiring and colluding with some persons to the plaintiff unknown, in the service of the Government in the General Land Offices at Washington, has been allowed to enter many tracts of land in said State, beside the land in controversy, which had heretofore been sold by the United States, under the frivolous pretext that such sales were informally made by the officers of the United States, or that some mistake was made by such officers, in their public record, of such sales. That the pretended sale by the land officers at Springfield of the land in controversy is in fraud of the rights of the complainant, and that Simmons holds the legal title in trust for him. That the duplicate certificate issued to said Winstanley has been lost or mislaid and cannot be found upon diligent search. The bill prays that Simmons may be decreed to convey the legal title to the complainant and for an account of rents and profits as if no judgment of eviction had been rendered against the complainant.

III. The answer of Simmons admits that the said John Winstanley did on the 30th day of December, 1835, apply to enter the land in controversy, and denies specifically each and every allegation in the bill pertaining to the purchase and the payment by John Winstanley of the tract of land in controversy; alleges that he recovered a judgment against said Ogle in the suit of ejectment, for the possession of said premises, in the Circuit Court of the United States for the Southern District of Illinois, on the the 17th day of January, 1878, and that by virtue thereof he was placed in possession of said premises on the 17th day of January, 1879; that from the date of the issuing of said patent to the commencement of the said ejectment suit, he has been at great expense in perfecting his title to said land, paying counsel, &c., and the complainant never in any manner asserted title to said land as against him until after the issuing of the writ of possession, that the complainant could have asserted his title in the suit at law, and expressly charges that the complainant has been guilty of laches. The defendant denies all charges of fraud and conspiracy, alleges that he purchased the land in good faith without any notice of the complainant's supposed claim or title to the land. The answer alleges that John Winstanley did, on the 30th day of December, 1835, apply to enter the land in controversy, but said application was, on the request of the said Winstanley, changed to the west half of the north-west quarter of section 9, town 2 north, range 9 west, and payments made thereon, and that on the second day of December, 1839, a patent issued to the said John Winstanly for the said last mentioned tract of land on said certificate No. 13,164, which was the first

patent ever issued for said tract of land, and that the patent alleged to have been issued on the 15th day of August, 1871, for said tract to William Schlotter could not legally issue therefor. That the said Winstanley never took any steps to secure a patent to the tract in controversy, well knowing that he had no legal claim thereto, and denies generally and specifically all allegations of the bill not specifically admitted. There was a general replication to the answer.

IV. It was admitted that the title of Winstanley to the land in controversy had been duly conveyed to Ogle, and it was proved that Ogle took possession of the land about nineteen years ago, and made some improvements thereon and had paid the taxes thereon, and that Ogle heard that Simmons had a patent to the land in 1872.

Some oral testimony was introduced by complainant against the objection of defendant, to show that before 1851 the Township Plat in the Edwardsville, Illinois, Land Office had written on the tract in Sec. 9, T. 2 N., R. 9 W., the letters A & P (applied and paid for), that the tract was not occupied or claimed by any one at that time. That afterwards these letters were erased and the figures 13,164 written over. That the same plat showed erasures on the tract in controversy and the figures 29,596 written over. And that John Winstanley was an intelligent and educated man, quite familiar with lands in this vicinity, and that he never laid claim to the tract in Sec. 9, T. 2 N., R. 9 W. That John Winstanley never was known to have claimed the tract in controversy until Ogle bought, he then said he had bought for Anderson. That John Winstanley was a careful man in business.

That the complainant had made search for the supposed final certificate 13,164, and it could not be found. That the complainant had a tax-title to the lands of some sort before the conveyance to him of land in controversy.

V. Exemplifications from General Land Office were introduced showing that John Winstanley applied to purchase the tract in controversy, December 30th, 1835, No. 13,164. That on this application the Register certified to the number of acres and price per acre and commenced a calculation, viz:

84.46
21.11

5.57

That the Register's local tract book has the following entry:

"1835, Dec. 30th, John Winstanley, St. Clair, S. ½, N. E. ¼ 3, 1 N. 9, 84.46, 1.25, 105.57."

under which is a memorandum:

"13,164 changed to W. ½, N. W. ¼, Sec. 9, Tp. 2 N., R. 9 W., 3d P. M."

Certified copies from Auditor's office Springfield, Illinois, were introduced purporting to be copies of checks 13,163, 13,164 and 13,165 of Register's certificates; No. 13,164 describing tract in controversy as having been sold to Winstanley. A certified copy of an extract from Local Tract Book showing the same entry was introduced. Proofs were introduced which would seem to show satisfactorily that the Schlotter title, in tract, in Sec. 9, is good, a patent is introduced which was issued on that title August 15th, 1871, about three months after date of Simmons' patent to tract in controversy.

VI. Exemplifications from the General Land Office were introduced by the defendant, showing that he, in 1871, applied in due form to purchase the tract in controversy, which application was allowed The Register's certificate of such purchase, the Receiver's receipt for the amount of the purchase money, and the final certificate or patent No 29,596, dated June 12th, 1871, to defendant, were also introduced. Exemplifications were also in evidence, showing from entries in the Tract Book, the purchase by John Winstanley, of the tract in Section 9, December 30th, 1835, and the purchase by defendant of the tract in controversy, February 27th, 1871. The defendant also showed, by copy duly certified, of the original Register's certificate No. 13,164, the tract purchased by Winstanley, December 30th, 1835, to be the tract in Section 9 and not the tract in controversy. This was further shown by the receipt of the Receiver of public monies, which not only specified the tract purchased by Winstanley, December 30th, 1835, as the tract in Section 9, but as an eighty acre tract, and the amount paid therefor as $100, and specified how the amount was paid, viz:

75	B. U. States.*
25	Specie.
$100	

A copy of the required affidavit which accompanied the application of John Winstanley, of December 30th, 1835, duly certified to be a correct exemplification, was in evidence which described the tract in Sec. 9 and not the tract in controversy as being purchased by him on that day.

*Bills of United States.

The tract in controversy, and the tract in Sec. 9, were shown by exemplifications from the official plat. It was also shown by defendant by an exemplification from the Records of the General Land Office that patent issued December 2d, 1839. No. 13,164 to John Winstanley for tract in section No. 9. The register of Receiver's Receipts and quarterly account of Receiver were introduced by defendant, showing the tract in Sec. 9 as having been purchased by John Winstanley, December 30th, 1835, and numbered in each as 13,164, and each stating price paid at $100.

VII. The defendant also showed by the record and files of the U. S. Circuit Court for the Southern District of Illinois, the commencement of ejectment suit by James H. Simmons against the complainant and his tenants, December 12th 1877, and judgment against them by default, January 17th, 1878, for the premises in controversy. The issuing of a writ of *habere facias*, January 16th, 1879, and its return duly executed January 21st, 1879, by putting James H. Simmons in possession of the premises in controversy.

VIII. It was stipulated between the parties on the hearing, that whatever title John Winstanley had was in complainant. That the Register's book of entries allowed on the 30th day of December, 1835, has a note in pencil to the effect that

> "No. 13,164 is changed to the W. ½ of N. W. ¼ Sec. 9, T. 2 N., R. 9 W., 3d P. M."

and that the premises in controversy are of the value of more than $5,000.

IX. A decree was entered by the Court against the defendant, adjudging that the defendant holds the legal title in the premises in trust for the complainant, and ordering a conveyance from defendant to complainant, and an account of the rents and profits received by defendant. The appointment of a receiver of the rents and profits pending appeal. An appeal was prayed and allowed to this Court on $300 bond being filed. The appeal directed to operate as a supersedeas. The bond was filed and approved and the record is brought to this Court for review.

Assignment of Errors.

I. The Court erred in rendering a decree for the complainant.

II. The Court erred in not dismissing the complainant's bill.

ARGUMENT AND BRIEF.

I.

Upon an examination of the decisions of the Supreme Court of the United States, we find but two classes of cases in which equity has interfered where patents have been issued by the government, on the ground of want of authority in the government to sell the land to patentee. The first class is where the government has actually sold the land, and it has been paid for by the purchaser, and nothing remains to be done but to issue the patent. In such case *upon payment of the purchase money and delivery of the Receiver's receipt*, the contract of purchase is complete, and thereafter the land ceases to be a part of the public domain. The government agrees to make a proper conveyance as soon as it can, and in the mean time holds the naked fee in trust for the purchaser, who holds the equitable title. *The payment* of the money constitutes the entry, and a second purchaser would take the land charged with the trust.

Witherspoon vs Duncan, 4 Wal., 218.
Carrol vs. Safford, 3 How., 461.

If a patent under such circumstances issues, the remedy in equity is to compel a coveyance of the legal title by the trustee to the holder of the equitable title.

In the case of *Frisby vs. Whitney*, 9 Wal., 191., the Supreme Court in discussing this subject, says:

> "A series of cases decided in this Court in which the equit-
> "able right of persons have been protected by the Court
> "against the legal title acquired by others in disregard of their
> "rights by the officers of the land department, is supposed to

"assert a different principle. It will be found in nearly all of "them that the party whose equitable title was thus protected, "had by the action of the officers of the land department and "the *payment and acceptance of the price*,* acquired a vested "right which these officers afterward disregarded in violation "of law."

And it is only when all the prerequisites are complied with, that such vested interest is acquired.

Shepley vs. Cowan, 1 Otto, 338.

The second class of cases, which have usually arisen under the pre-emption laws, is where a person desiring to obtain title, offered to do everything which the law required to be done in order to obtain title, and the officers whose duty it was to accept the offer, wrongfully refused to permit him to take some necessary steps, which he was ready and willing and offered to take. There must have been an offer upon the part of the claimant to make payment as required by law. The relief in such case is not to compel a conveyance of the legal title subsequently conveyed to another, but is to set such patent aside, and suit for that purpose may be brought by the United States, if the facts so warrant. The right of the first claimant is to coerce the officers of the government and go on and complete his entry, and if on the hearing, a proper case is shown, the patent will be cancelled; and in the meantime the holder of the patent will be restrained from using it in a court of law to eject the one having the prior right. The decree would not be to convey the patent title issued, for acts necessary to entitle the party to the patent have not been performed, but have stop-

*These words are italicized by counsel.

ped short by the wrongful interference of some agent of the government. If the only thing remaining to be done is payment, and if there had been a tender of the money in apt time, which had been wrongfully refused by the Reciever, it might be that upon a tender of the money to the subsequent purchaser, equity would compel a conveyance by such purchaser in order to avoid circuity and multiplicity of suits. But no conveyance would be decreed, nor would a patent issue, nor would a claimant be entitled to a patent for land subject to sale *without full payment for such land.*

Of course we do not speak of cases where the patent has been obtained by the fraud of the patentee, as where one person entrusted with money to enter land for another enters it in his own name or like cases, as it is immaterial how the patent happened to issue to a purchaser claiming title through a purchase made after the land is no longer subject to sale, by reason of another having a vested right therein and the right to have the legal title from the United States, and so far as any incidental allegation of fraud is contained in the bill it does not help the case stated, nor is there any evidence in support thereof.

II.

It is sought to bring this case within the class first mentioned. The substantial allegations are that on the 30th day of December, 1835, John Winstanley applied in the form required by the regulations governing the local land office at Edwardsville, Illinois, to purchase from the United States the south half of the northeast quarter of section three (3) in township one (1) north, range nine (9) west of 3d P. M.; that the register of

the land office certified upon such application that the said tract contained 84 46-100 acres, and that the price agreed upon was $1.25 per acre; that the said tract of land was there purchased and paid for by the said John Winstanley for the price and sum of $1.25 per acre; that the defendant had notice that Winstanley had purchased and paid for the said tract on the 30th day of December, 1835, and that in consequence of such purchase and payment, the said John Winstanley, or his assignee, was seized of an equitable right in said land, to have from the United States the legal title in form, by a patent, and that the United States could not legally nor equitably dispose of the same; that in accordance with law the original certificate of entry No. 13,164 was deposited by the officers of the local land office at Edwardsville, Illinois, in Washington, D. C., and as he is informed and believes a duplicate register's certificate, as required by law, was by the officers of said local land office given to the said John Winstanley at the time of his said purchase of said land. It is further distinctly charged in the bill that the west half of the northwest quarter of section nine (9), township two (2) north, range nine (9) west of 3d P. M.,contains but eighty acres, the purchase money for which was only $100, whilst the other tract above described in section three contains 84 46-100 acres, the purchase money for which was the sum of $105.57, the amount of money credited as paid upon the land office books for the land sold to John Winstanley on the 30th day of December, 1835.

It will be seen that it is claimed that on the 30th day of December, A. D. 1835, John Winstanley purchased

the land in controversy; that he paid for it; that the original certificate of purchase was made out and transmitted by the Register to the General Land Office at Washington, and duplicate thereof delivered to Winstanley; that the books kept by the land officers show the receipt of the purchase money by the United States; and that the amount so shown to be paid by Winstanley was $105.57, being the exact amount necessary to purchase 84 46-100 acres, and not the lesser sum necessary to purchase an eighty acre tract, viz: $100. If this was proved it would doubtless show that Winstanley entered the S. ½, N. E. ¼, Sec. 3, T. 1 N., R. 9. W., 3d P. M., and the United States could not legally nor equitably have sold the tract subsequently to the defendant. But this is not only not proved, it is disproved by the evidence. A duly certified copy of the original certificate of purchase transmitted by the Register of the Local Land Office to Washington, numbered as alleged in the bill 13,164 is given in evidence, and it certifies not to the purchase of S. ½, N. E. Qr., Sec. 3, T. 1 N., R. 9 W., 3d P. M., by John Winstanley, on the 30th day of December, A. D. 1835, and that the sum paid by him was not $105.57; but it shows that John Winstanley, on that day, viz: December 30th, 1835, purchased the W. ½, N. W. Qr. Sec. 9, T. 2 N., R. 9 W., 3d P. M., containing eighty acres, for the sum of $100. If a duplicate of this certificate was delivered to Winstanley, as alleged in the bill, it was not for S. ½, N. E. Qr., Sec. 3, T. 1 N., R. 9. W., 3d P. M., but for the W. ½, N. W. Qr., Sec. 9, T. 2 N., R. 9 W., 3d P. M.

We have also given in evidence a duly certified exemplification of the General Land Office Tract Book kept at Washington, as follows:

"Township two north, range nine west, 3d P. M., Illinois, description of tract, part of section, west half of north-west quarter, section nine, township two, range nine west, contents, acres eighty, rate per acre $1.00, cents 25, purchase money, dollars $100, name of purchaser, John Winstanley, date of sale, December 30th, 1835, number of receipt and certificate of purchase, 13,164."

A duly certified copy of the original Receiver's receipt No. 13,164, of which a duplicate was required to be given to the purchaser, is in evidence in this case, bearing date the 30th day of December, 1835. This receipt shows that on the 30th day of December, 1835, John Winstanley paid to the Receiver for the W. ½, N. W. Qr., Sec. 9, T. 2 N., R. 9 W., 3d P. M., containing 80 acres at $1.25 per acre, the sum of $100. The receipt specifies how and in what money the payment was made, as follows:

75.00 B. U. States.
25.00 Specie.

$100.00

This receipt is supported by the Receiver's Register of Receipts. The entry made in this book on the day, and at the time the receipt was issued is:

"13,164, Dec. 30th, 1835, John Winstanley, W. ½, N. W. Qr., Sec. 9, T. 2 N., R. 9 W., 3d P. M., 80 acres, $1.25 per acre, $100."

The quarterly report of the Receiver shows the same transaction occurring on the 30th day of December, 1835, the payment of the sum of $100 to the Receiver by John Winstanley for the said W. ½, N. W. ¼, Sec. 9, T. 2 N., R. 9 W., 3d P. M.

None of these official books, records and papers show the payment of $105.57 by John Winstanley for S. ½, N. E. ¼, Sec. 3, T. 1 N., R. 9 W., 3d P. M.

Are we then not justified in saying in view of the receipt itself, and the books and the report of the Receiver, the evidence not only does not prove the allegation of the bill "that the S. ½, N. E. ¼, Sec. 3, T. 1 "N., R. 9 W., 3d P. M., contains 84 46-100 acres, the "purchase money for which was the sum of $105.57, "amount of money credited as paid for the land sold to "John Winstanley on the 30th day of December, 1835," but it disproves the payment alleged, and proves payment of a less sum of money, for an entirely different and a smaller tract of land, the sum, the rate, the quantity, and the tract, stated and described in three different places in official papers, books and reports, which the Receiver was required by law to execute, keep and make at the time. There cannot be a reasonable doubt of the fact that Winstanley paid the Receiver $100 and no more.

It must be borne in mind that this was a purchase of land sold at private sale by entry at the land office under the act of April 24th, 1820. Lester's Land Laws, &c., vol. 1, p. 34.

This law provides (Sec. 3) that the price at which public lands shall be offered for sale shall be one dollar and twenty-five cents per acre, but no lands shall be sold, either at public or private sale, for a less price than one dollar and twenty-five cents per acre; that lands not sold at public sale should be subject to private sale, by entry at the land office, at one dollar and twenty-five cents an acre, to be paid at the time of making such entry as aforesaid. The "aforesaid" refers to section two of the act which provides that credit shall not be allowed for the purchase money on the sale of

any of the public lands, which shall be sold after the first day of July next (1820), but every purchaser of land sold at public sale thereafter shall, on the day of purchase, make complete payment therefor, and the purchaser at private sale shall produce to the Register of the land office a receipt from the Treasurer of the United States or from the Receiver of public monies of the district for the amount of the purchase money on any tract before he shall enter the same at the land office. We have shown that the original certificate of purchase filed in the General Land Office was for the W. ½, N. W. Qr., Sec. 9, T. 2. N., R. 9 W., 3d P. M., containing eighty acres, and under the law of 1820, the Register of the Land Office, upon the presentation of the Receiver's receipt in evidence to him, had no power to deliver to Winstanley a certificate of purchase for the S. ½, N. E. ¼, Sec. 3, T. 1 N., R. 9. W., 3d P. M., and could not lawfully have permitted him to enter a tract of land containing more than eighty acres. The certified plats in evidence show that the last described tract contains 84 46-100 acres. Upon what then does the vested right claimed for Winstanley rest? Upon payment in full which alone can give such a right? Certainly not. That is not proved; it is disproved. The complainant shows only an application, a stubb, and a certified copy of the memoranda of *entries allowed*, a minute upon the Local Tract Book, which last is accompanied by a note explaining that No. 13,164 is changed to W. ½, N. W. ¼, Sec. 9, T. 2 N., R. 9 W., 3d P. M. The application to purchase, if made in due form and allowed by the Government, gives no such right. *The purchase must be made.* The application must be followed

up *by payment in full.* An application to enter lands without complying with all the requirements of the law gives the party so applying no legal nor equitable rights in the premises.

Opinion B. F. Butler, Attorney General U. S. Laws, Instructions and Opinions, vol 2, p. 213. See *Shepley vs. Cowan*, 1 Ottó (U. S. R.) 338.

The application should have been accompanied by an affidavit that the land applied for was not pre-empted. There is an affidavit in evidence, No. 13,164, which states that affiant had been upon the land described in the annexed application, namely, W. ½, N. W. ¼, Sec. 9, T. 2 N., R. 9 W., 3d P. M., and that it was vacant and unoccupied. Which tract would such an affidavit apply to?

The Register failed to certify on the application given in evidence as required by the instructions from the department (Laws, Instructions and Opinions in Regard to Public Lands, vol. 2, p. 451) that the land in that application described was vacant and unocupied, and we do not see how he could have done so upon such an affidavit. Upon this application will be found the following bit of calculation :

$$\begin{array}{r} 84,46 \\ 21,11, \\ \hline 5,57 \end{array}$$

which looks as though some hitch occured then and there and the calculation never was completed. All the records show either that Winstanley then and there made another application or that he went on and purchased the W. ½, N. W. ¼, Sec. 9, T. 2 N., R. 9 W., 3d P. M., without a formal application. The stubb

is not made evidence for any purpose and proves nothing. The note accompanying the permission granted by the Register annuls the allowance, as it was made on the same day, or at least before the Register made his monthly report to the General Land Office at Washington, and before the General Land Office Tract Book was made up there. The minute on the local tract book mentions no sum of money whatever.

None of the evidence introduced by the complainant proves, or tends to prove, payment, for none of these writings were made by the officer entitled to receive payment of money, and all the records kept by such officer show that payment was never made by John Winstanley for the tract in controversy. The minute upon the local tract book, the allowance of an entry, a certificate of purchase itself, without full payment of the purchase money, would be without authority of law and void. The Register was forbidden to issue a certificate of purchase in the absence of the receipt required by law.

If no better evidence were at hand such papers might tend to raise a presumption that payment had been made to the Receiver, but they cannot overcome the Receiver's receipt and the entries made by that officer himself.

A patent, if issued would not be delivered without the return of the duplicate Receiver's receipt, and it is upon the original certificate, which, when prepared by the officers of the local land office is transmitted to Washington and deposited in the general land office, that patent issues, and it will be seen from duly certified exemplification in evidence in the case, that upon orig-

inal certificate, No. 13,164, on the 2d day of December, 1839, a patent did issue to John Winstanley for the W. ½, N. W. ¼ sec. 9, T. 2 N., R. 9 W., 3d P. M. If the duplicate can be considered as an original, its only use after its presentation to the Receiver, is simply for the purpose of identifying the person entitled to receive the patent from the officer to whom it is sent for delivery, while the one deposited at Washington is the official record of the land office, upon which the government itself acts, and an exemplification of which is made evidence by law.

Payment of the purchase money in full of which the Receiver's receipt is made the evidence by the law, is the controling fact, without which no title, legal or equitable, could be acquired by anyone. If the certificate of purchase of the Register for the S. ½, N. E. ¼, Sec. 3, T. 1 N., R. 9 W., 3d P. M., had actually been issued by the Register, and the facts had been as proved in this case, that Winstanley had only paid for an eighty acre tract, and such tract was described in the Receiver's receipt, Winstanley could not have obtained a patent, nor could he have any relief as against a subsequent purchaser of the tract, in law or equity.

In the case of *Miller vs. Kerr*, 7 Wheaton, p. 1, a military warrant was issued to Powell for services rendered in the *Continental* line. The certificate upon which the warrant was issued, stated that the services rendered by Powell were in the *State* line. Subsequently the land which was entered upon this warrant, was entered by another upon a warrant issued upon a certificate given for services in the Continental line and ejectment brought to recover possession. Powell's assignee sought to

restrain the suit and compel a conveyance of the patent title to him. The land in controversy at the time both entries were made, was only subject to entry for services rendered in the Continental line. The question was, could the court support the prior entry and survey upon this warrant against a senior patent. The court held that inasmuch as the certificate was filed, and preserved in the office, as the document upon which the warrant issued, it was as much a part of the record as the warrant itself, and that as Powell, as an officer of the *State* line, was not entitled to a warrant which could appropriate the land in controversy, he could have no relief in equity. In the case at bar, *Winstanley having only paid for an eighty acre tract of land and having Receiver's receipt for the sum of money required to purchase eighty acres of land and no more,* and describing an eighty acre tract of land, which same eighty acre tract of land was also described in the affidavit which was required by law to accompany Winstanley's application and to be filed at the same time, *he was not entitled to a certificate of purchase of a tract of land containing 84 46-100 acres.* The Register was not authorized to issue it, and if he did so, it was by mistake. And the certificate of purchase sent to Washington shows that either he did not issue such certificate to Winstanley, or that he corrected his mistake when he made his report to Washington as he was required by the regulations of the land office to do. Winstanley would not be entitled to a patent upon the evidence in this case, irrespective of the fact that the land officers of the United States have decided upon the record, that inasmuch as Winstanley neither paid nor tendered payment of the sum required to purchase S. ½, N. E. ¼,

Sec. 3, T. 1 N., R. 9 W., 3d P. M., that tract of land was still subject to entry, and so deciding, sold the land to the defendant, received the necessary purchase money from him and issued the patent in form to him.

If the Register inadvertently issued a certificate of purchase for an 84 46-100 acre tract of land when Winstanley had only paid for an eighty acre tract, it was his duty then and there to change the certificate, if made out, to an eighty acre tract, which he probably then and there did to the tract which the Receiver's receipt showed Winstanley had purchased. The entry on the Register's book of allowance of entries was no doubt made up at the time the application was made, from the application itself, and when Winstanley presented the Receiver's receipt for the eighty acre tract, the Register made the pencil note of the change, and the entry, which he sent to Washington for record in the General Land Office, was the entry actually made, and which was the only entry Winstanley was entitled to make by virtue of the payment made by him and the receipt issued by the Receiver. If the Register had made dilligent search he might have ascertained that the W. ½, N. W. ¼, Sec. 9, T. 2 N., R. 9 W., 3d P. M., had already been sold, but the affidavit presented by Winstanley himself proved that this tract was subject to sale or entry, and the Receiver's receipt showed that Winstanley had actually purchased and paid for it. It is immaterial in this case whether the W. ½., N. W. ¼, Sec. 9, T. 2 N., R. 9 W., 3d P. M., had been previously sold. This is not a contest between Winstanley and Schlotter or their assignees. If Winstanley paid for a tract which had already been sold, the laws of the United States authorized repayment

of purchase money for land so erroneously sold by the United States. (See act of January 12th, 1825, Lester's Land Laws, vol. 1, p. 38.) If there was a payment in excess of the quantity, the excess was required to be refunded. (See Instructions General Land Office, Id. vol. 1, p. 667.) Or Winstanley might have had this $100 payment transferred to an eighty acre tract which had not been sold. (See act of May 24th, 1824, Id. vol. 1, p. 36.) But neither Winstanley nor any one claiming to hold under him took any such steps.

III.

There is another view of this case. It is stated in the evidence of Thomas Winstanley that his father told him that he made this entry for Anderson. The statements of Winstanley are not evidence in support of his title, even if made while he held the claim, but would be if made against the claim. But this statement of this supposed entry shows it was made directly against the laws of the United States which forbade one person to enter land in his own name for another, and Winstanley and his assignees can have no standing in a court of equity to enforce his supposed rights in regard to any tract entered under such circumstances. Each person was limited by law as to the quantity of land which he could enter, and Anderson could not evade the law by having Winstanley enter land for him in Winstanley's name and taking a deed therefor from Winstanley.

IV.

This bill is filed too late, even if the facts are as stated in the bill. If the government sold the S. ½, N. E. ¼, Sec. 3, T. 1 N., R. 9 W., 3d P. M., to Winstanley,

received payment therefor, and delivered a certificate of purchase to him, and his grantee was in possession at the time the ejectment suit was instituted against the grantee, this would have been a complete defense to the suit at law.

Simmons vs. Wagner, 11 Otto (101 U. S. R.) 260, and cases there cited.

Equity will not grant relief because the complainant employed counsel in the ejectment suit, or advised with them in regard to his proper course in the ejectment suit.

"If the fact that the counsel were mistaken in the law were a "good ground for relief in equity, a judgment at law would "be of but little value."

Richmond & Petersburg R. R. Co. vs. *Shippen*, 2 Pat. & Heath, 327.

"It is undoubtedly the true rule that neither the ignorance, "blunder or misapprehension of counsel, not occasioned by "the adverse party, is any ground for vacating a judgment."

Freeman on Judgments, sec. 508.

"It is the duty of each party to exercise due care and "diligence in pursuing or defending his rights, and a "complainant in equity seeking to avoid the effect of a "judgment against him at law, must therefore always disclose "a sufficient excuse for not making his defense in the original "action."

Freeman on Judgments, sec. 502.

If payment, entry, the issuing of a certificate and possession of the land are shown here, they could have been shown in the ejectment suit, and would have been a complete bar. And this is not an equitable but a legal defense. The contents of a lost paper can be proved in an action at law as well as in a suit in

chancery. And the loss of the certificate constitutes the only difference between the facts alleged in the bill, and the facts proved as a defense in the case of *Simmons vs. Wagner, supra.*

In the case of *Stoddard vs. Chambers*, 2 How, 284, an ejectment case, the court said in speaking of a patent title:

> "The important question arises whether the defendant's "title is not void. That this is a question as well examinable "at law as in chancery, will not be controverted. * * * * * "No title can be held valid which has been acquired against "law; and such is the character of defendant's title, so far as "it trenches on the plaintiffs. * * * * * * * It is true a "patent possesses the highest verity. It cannot be contradicted "or explained by parol, but if it has been fraudulently "obtained, or issued against law, it is void. It would be a "most dangerous principle to hold that a patent should "carry the legal title, though obtained fraudulently or against "law."

This doctrine as here laid down was quoted and adopted by the Supreme Court of Illinois in *Ballance vs. McFadden*, 12 Ill., 317, where that Court says:

> "If it appears on the face of a patent or from any legitimate "evidence, that it was issued in a case not authorized by law, "it is inoperative and void and may be impeached collaterally, "in an action of ejectment."

See also *Jackson vs. Lawton*, 10 Johnson, 23.
Patterson vs. Winn, 11 Wheaton, 380.
Polk's Lessee vs. Wendal, 9 Cranch, 87.

Either the title of defendant is the best under the evidence, as we insist, or it is a nullity, if it is a nullity, the defense could have been made at law, and there is no title in the defendant to convey as decreed, except

what he has by virtue of his judgment in ejectment and certainly that cannot be disturbed.

It cannot be doubted then, that if we are to be guided by authority, we must conclude, that in the ejectment suit, had the facts been proved as alleged in the bill, the recovery there would have been defeated.

Where a party has a defence which is available at law, and has had an opportunity to insist upon his rights in a court of law, in a suit directly involving them, and has neglected so to do, he is barred by his own laches from asking the question to be re-opened on the chancery side of the court.

Packwood vs. Gridley, 39 Ill., 388.
Elston vs. Blanchard, 2 Scam., 420.
Scott vs. Whitlow, 20 Ill., 310.
Ballance vs. Loomis, 22 Ill., 82.
Abrams vs.. Camp, 3 Scam., 290.
Miller vs. Morse, 23 Mich., 365.
Freeman on Judgments, sec. 485.
Foster vs. Wood, 6 Johns. Chy., 87.
Kinney vs. Ogden, 2 Green. Ch., 168.
Cunningham vs. Caldwell, Hardin, 123.
York vs. Clopton, 32 Ga., 362.
Vilas vs. Jones, 1 N. Y., 274.
Williams vs. Lee, 3 Atk., 223.
Bateman vs. Willoe, 1 Sch. & Lef., 201.
Baxter vs. Dear, 24 Texas, 17.
Lester vs. Hoskins, 26 Ark., 63.
Marine Ins. Co. vs. Hodgson, 7 Cranch, 332.
Cromwell vs. County of Sac., 94 U. S. R., 351.
See *New York Ins. Co. vs. Bangs*, decided in this Court, (unreported: opinion filed May 2. 1881.)

It will doubtless be urged here, as it was below, that by reason of the judgment having been by default, it constitutes no bar. But we insist that no case can be found sustaining such a position, except such as have arisen in States where the distinction between equity and law jurisdiction have been substantially abolished. And only in such cases where the defence was purely of an equitable nature. In this case if the facts were as claimed in the bill the patent of Simmons was as absolute a nullity as if it had been a forgery, and certainly in that case no chancellor would interfere where judgment had been rendered, an account of such a defence not having been interposed. Where a case is presented to a Court of chancery in the first instance, and the question arises as to whether there is a remedy at law, and whether the party shall be remanded to a Court of law, and it appears that the Courts have concurrent jurisdiction, but the remedy is more complete in a Court of equity, it might retain the case; but such a doctrine has no application, where the case has passed through a Court of law and the defence which could have been there made would have defeated the action.

This Court has said:

> "It is the settled doctrine of this Court in reference to all questions affecting the title to real estate, to permit the different States of the Union to settle them, each for itself; and when the point involved is one which becomes a rule of property, we follow the decisions of the State Courts, whether founded on the statutes of the States, or their views of general policy."

Miles vs. Caldwell, 2 Wal. 43.

The revised Statutes of the State of Illinois Chap. 45 Ejectment Sec. 34, provides:

> "Every judgment in the action of ejectment shall be "conclusive, as to the title established in such action, upon the "party against whom the same is rendered, and against all "persons claiming from, through or under such party, by title "accruing after the commencement of such action, subject to "the exceptions hereina ter named."

The exceptions are as to parties under disability, and that the party failing to obtain a new trial at common law, may have a new trial as a matter of course, upon the payment of the costs of the suit at any time within one year. (*Idem*, Sec. 35). This provision is undoubtedly inserted in the law in order that a party who has not had a fair trial, by reason of surprise, or being unprepared, may have one more opportunity, before final judgment is rendered against him. The ancient fictions of the action are by this statute abolished. The only plea under this statute is "not guilty" and under it the "defendant may give, in evidence, any matter that may tend to defeat the plaintiff's action, except as hereinafter provided." (*Idem*, Sec. 19) none of the exceptions affect in anywise a defense of this character.

In the case of *Kelly et. al.* vs. *Donlin et. al.* 70 Ill. 385, the Supreme Court in considering the effect of this Statute quote and adopt the language of Mr. Bigelow in his work on Estoppel, page 46, *i. e.*:

> "It follows, also, from all the authorities considered, that a "valid judgment for the plaintiff sweeps away every defense "that could have been raised against the action; and this, too, "for the purposes of every subsequent suit, whether founded "on the same or a different cause. Nor will equity relieve the "defendant from a judgment on any ground of which he "should have availed himself in the action at law."

Again the same Court in the same case (page 386) quotes with unqualified approval the views of the Supreme Court of Massachusetts *Adams vs. Barnes*, 17 Mass., 365, *i. e.*:

> "It is such an estoppel as runs with the land, and extends to "all who are privies in estate to either of the parties to such "judgment. A judgment which affects directly the estate "and interest in the land, and binds the rights of the parties, "is at least as effectual as a release or confirmation by one "party to the other, such an estoppel makes part of the title, "and extends to all who claim under either of the parties "to it."

See also *Oetgen vs. Ross*, 54 Ill., 81.

This Court in some cases in which similar statutes of other states were under consideration has held that the common law action of ejectment has been changed by them, and that in such states the judgment is as conclusive as a judgment in a personal action.

Miles vs. Caldwell, supra.

Sturdy vs. Jackaway, 4 Wal., 174.

And this is so in cases where courts of law and chancery would have concurrent jurisdiction.

Abrams vs. Camp, supra.

And even if we had not set this up in our answer, as we did, we could insist on it on the hearing.

Packwood vs. Gridley, 39 Ill., 388.

Had the complainant here shown that there was some mistake in the facts in the ejectment case, and drawn his bill on such a case, he might have brought himself within some of the cases; but nothing of this kind appears from the bill; on the contrary, he seems to have pursued his course deliberately with all the facts as now shown before

him and with legal advice, and when the mistake is as to the law, a court of equity will never grant relief.

Freeman on Judgments, sec. 502.
Hubbard vs. Martin, 8 Yerg, 498.
Meem vs. Rucker, 10 Grat., 506.
Schricker vs. Field, 9 Ia., 366.

The laches in this case are inexcusable. No patent was ever issued to Winstanley or his assignees for the S. ½, N. E. qr., sec. 3, T. 1 N., R. 9 W., 3d P. M., nor did they ever apply for a patent. A patent was issued to Simmons in 1871, which came to Ogle's knowledge in 1872. Ogle did not resort to a Court of Chancery, while in possession, to remove a cloud upon the title, or to have a conveyance to him of the legal title. He is sued in ejectment in 1877, and makes no defense. Judgment is entered up against him in January, 1878. He might have had a new trial under the statute at any time within one year upon payment of the costs. This he does not do. At the end of the year from day of judgment the defendant was put in possession of the premises under a writ on his judgment. Ogle waits, and finally, in the following March, he files his bill to regain a possession, which he would never have lost had he interposed as a defense, the facts upon which he seeks relief in his bill and proved them.

If now we have properly presented the law of this case, the complainant must find himself in the midst of a dilemma. If he has not proved the allegations of his bill, and we insist he has not, he is certainly not entitled to the relief he prays. If he has proved his bill, he only shows that he had a good defense to the suit at law and

neglected to present it. In either view of the case the result would be the same; the bill would be dismissed with costs.

The fact of the possession of the land by the complainant, prior to the purchase of the defendant from the government, would of course be notice of all the equitable claims of the complainant, which the defendant could by diligence ascertain. It was enough to put him upon inquiry; but his long continued possession does not add any equity to his claim. The mere possession of public lands gives no title in law or equity.

Burgess vs. Gray, 16 How, 65.

The complainant's possession was only notice of the facts as they existed at the time, as will be seen by reference to the case of *Davidson vs. Porter*, 57 Ill., 300.

To state this case again briefly, neither Winstanly nor his assignees, are not now, nor ever have been, though obstructed by no one, in a position to demand the patent title to the S. ½, N. E. ¼, sec. 3, T. 1. N., R. 9 W., 3d P. M., from the government. Such being the situation, there is no reason why Simmons, or any one else, could not purchase it from the United States. The complainant has utterly failed to prove the allegations of his bill, upon which he founds his equitable claim; but such allegations are disproved, especially *the essential allegation of full payment*. The facts set up if proved, would have been a complete bar to a recovery in the suit at law, and, inasmuch as the question could have been settled in that suit, in point of law, they have been tried and cannot be re-tried in a court of equity. It has become *res adjudicata*.

It will be seen by the Court that complainant has presented no facts to the Court which can strongly appeal

to equity interference. He had obtained a sort of a "squatter's" title to the property before he obtained the quit-claim deed, from the trustees of the Commercial Bank, he bought on speculation. He entered into possession, paid the taxes and made some trifling improvements, it is true, but in the mean time his outlay was more than reimbursed by the rents and profits. The appellant upon the decision of the Department of the Interior that the land was subject to sale bought it and paid the required price and has been, of course, at much expense in pursuing his rights. There is not one word of competent proof in the record sustaining the charges against the Department made in the bill, or to show that appellant did not act in perfect good faith throughout the transaction. It is believed that the decree of the Circuit Court will be reversed.

ROBERT A. HALBERT AND
FRANKLIN A. McCONAUGHY,
for the Appellant.

No. 957.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1881.

JAMES H. SIMMONS,
APPELLANT,

—vs.—

JOSEPH OGLE.

Appeal from the United States Circuit Court for the Southern District of Illinois.

ARGUMENT AND BRIEF.

ADVOCATE STEAM PRINT, BELLEVILLE, ILLS.

ROBERT A. HALBERT,
FRANKLIN A. MCCONAUGHY,
For the Appellant.

FILED

Supreme Court, United States.

APPEAL FROM SOUTHERN DISTRICT OF ILLINOIS.

WM. H. SIMMONS

vs.

JOSEPH OGLE.

BRIEF AND ARGUMENT FOR COMPLAINANT,

BY

JAS. L. D. MORRISON.

JNO J. DALY & CO., PRINTERS, 211 N. THIRD STREET, ST. LOUIS.

No. 935.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 188

JAMES H. SIMMONS,

vs.

JOSEPH COLT,

Appeal from the United States Circuit Court for the Southern District of Illinois.

ARGUMENT AND BRIEF.

ROBERT A. HALBERT,
FRANKLIN A. MCCONAUGHY,
Solicitors for Appellant.

FILED

Supreme Court, United States.

APPEAL FROM SOUTHERN DISTRICT OF ILLINOIS.

WM. H. SIMMONS

vs.

JOSEPH OGLE.

BRIEF AND ARGUMENT FOR COMPLAINANT,

BY

JAS. L. D. MORRISON.

JNO J. DALY & CO., PRINTERS, 211 N. THIRD STREET, ST. LOUIS.

WILLIAM H. SIMMONS

vs.

JOSEPH OGLE.

Appeal in Supreme Court, U. S., from Southern District of Illinois.

Complainant's bill is filed for relief and prays a decree that defendant, who holds the legal title by patent from the United States to the south half of the northeast quarter of section 3, township 1, north of range 9, west, in St. Clair County, Illinois, may be decreed to convey said legal title to complainant, who claims to hold a better and superior equity entitling him to have his title quieted by the absorption of the legal title evidenced against him by the patent, and thus remove the cloud upon his title. No attempt is made to assail the patent.

The bill was filed in the Circuit Court of the county in which the land is located, under the belief that in this case the Federal Court possessed no original jurisdiction. Case was removed to the Circuit Court of the United States for the Southern District of Illinois, where it was heard and relief granted as prayed for.

Owing to the apparent conflict between the record testimony of the different officers of the local and general land department, as to the purchase of the south half of the northeast quarter of section three (3), town. one (1), N. R. nine (9), W. 3d P. M., by Thomas Winstanly, on the 30th day of December, 1835, it becomes necessary to look into the pro-

cess by which purchases of the public lands were made at the date of Winstanly's entry.

This examination involves the question as to which testimony the Registers, or Receivers, or the General Land Office holds the highest verity in a Court of Equity. The entry of Winstantly was made in 1835, and under the instructions of the department of May 25, 1835, found in 2d vol. of Land Laws and Instructions, page 444, to which the attention of the court is specially invited. These instructions prescribe the formalities required for the entry of public lands. From their examination it will be seen that the "Register" and not the "Receiver" is charged with the sale of the public lands. These instructions are in compliance with the Act of Congress of 1804, providing for the "disposal of the public lands in the Indiana Territory," 2d vol. of United States Statutes, page 379, which act, by the fifth section, provides that all lands salable "may be disposed of at private sale by the *Registers* of the respective land offices—therefore the special agents of the Government in their sale.

Now the mode prescribed to the "Register" in said instructions, by their 32d section, page 451, part 2 of Land Laws and Instructions, provides that "when an individual applies to the Register to purchase a tract of land, he is required to file an 'application' therefor (a form of which has been furnished). On such 'application' the Register indorses his certificate (agreeably to a form furnished), showing that the land is vacant and subject to entry, which certificate the applicant carries to the Receiver, and is evidence upon which the Receiver permits payment to be made and issues his receipt therefor."

"The Register must immediately indicate the sale on his

township plat and enter the same in his tract book," after sale is completed.

The lands are all sold by serial numbers, the number being that of the "application." This number, after the sale is consummated, is inscribed upon the "township plat," upon the subdivision of land to which it applies.

Thus, in the present case, according to the record, page 34, bottom, Thomas Winstanly applied for the purchase of the south half of northeast quarter of section 3, T. 1, N. R. 9 W., of the third principal meridian, the Register numbering his application 13,164. The Register also certifies its area and the price agreed upon to be paid. This original "application" was, by the custodian, brought into court, and is by the court, page 36 of record, made part of the record.

This No. 13,164, number of "application," is required to be entered upon the proper subdivision of the township plat, by the Register, when the purchase is consummated. That this was done by the Register is apparent from the deposition of Morrison, page 30 of record, who found clear evidence of erasure and a mutilation of the township plat on the subdivision in section 3; this mutilation, however, was so inartificially done, that the figure "3" of 13,164 was clearly defined through the erasure, and the figures "29,596," No. of Simmons' entry, placed above them. Of course, this was done in the interest of Simmons, and after his entry was allowed.

Defendant, in his answer, admits that Winstanly applied to enter the land in section 3, as alleged by complainant, in 1835; that "application" shows the land sought to be purchased, and that it was vacant.

This "application," it is contended by defendant, was

changed to the west half N. W. 9, 2 N., 9 W., and their evidence to prove this change does not rest upon a new "application" signed by Winstanly, but upon the flimsy pretext that a marginal note in pencil shows the change by Winstanly, not made on the "application," the original of which remained until the day of trial amongst the land office records at Springfield, (and was produced to the court on the trial as certified by the court), but is found at Washington, upon the Register's Books of Entries, of 30th December, 1835. What business this marginal "pencil memoranda" has there, who put it there, when it was placed there, and for what purpose, is not disclosed by the defendant. The *original* book of entries of the date of December, 1835, as certified by the local office at Springfield under description of "Extract from Tract Book," page 91 of printed record, has no notice of "pencil" memoranda. This we only find in records from the General Land Office, see page 34 of printed record. No doubt this record would correspond with its "original" at Springfield but for the same handy manipulators who directed operations upon the "township plats" as shown by the deposition of Morrison; besides, we scout this pencil record as wholly unworthy the attention of the court. National records should be in more durable form than a pencil mark, even though heralded with the precautionary signal, *"See below."

But let us test this hypothesis of defendant that "application" of Winstanly for the south half northeast quarter 3, T. 1, N. R. 9 W., was changed by his consent to west half southwest 9, 2 N. 9 W. What would have been the proceedings under such "application?" The Register charged with making sale would have turned to his township plat

and upon the subdivision west half N. W. 9, 2 N., 9 W., he would have discovered that it was not subject to sale, as it had already been sold, as shown by the letters "A. P." marked upon it. The record shows it was sold to Edwards in 1817, eighteen years before Winstanly's entry was made, and that the letters "A. P." which Morrison's deposition shows, were upon it in 1851, were rightfully there in conformity with law. The sale to Edwards in 1817 was under the "credit system," and the law of May 10, 1800, Vol. 2, United States Statutes, page 73, providing for sale of lands northwest river Ohio by the eighth section of the act, letters "A. P." are required to be marked upon the subdivision sold on township plat. This township plat, since that time, has been required to be "open at all times in presence of Register for the inspection of any individual applying for the same." Section 8th of the act, page 77, 2 Statutes at Large.

"A. P." would have concluded the register from receiving an "application" for it or selling it; but if he had chosen to pursue his examination as the witness Morrison did in 1851, as stated in his deposition, page of record 30, he would have found by the Ledger of 1822 that the W. ½ N. W. 9, 2 N. 9 W., was finally paid for by application of relinquishments of other lands, in conformity with which final certificate was issued to Wm. Schlotter in 1871, see copy of final certificate, printed record, page 37. In view of these record facts the Register must have rejected Winstanly's "application" if he had made one to enter W. ½ N. W. 9, 2 N. 9 W., for the simple reason that the office had sold the land eighteen years before. Thus we have shown:

1. That Winstanly, December 30, 1835, applied to enter north half southeast 3, T. 1, N. R. 9 W.

2. That the number of his application was 13,164; that said number was transferred to the township plat, but has since been surreptitiously erased and Simmons' number of entry written over it.

3. We show, by record of Tract Book, the sale to Winstanly. Now, these entries are made by the "Register" when sale is fully consummated and "Register" has furnished purchaser the evidence of it, this evidence is known as the "final certificate" of purchase. 'Defendants deny that such final certificate ever issued—complainants allege that it did.

The best evidence would be its production; but complainant, in his bill, sustained by the deposition of Joseph Ogle (Record, page 33), accounts for its absence, so that it cannot be produced.

The next best evidence is from the files of the local land office. Attached to each final certificate was a marginal "check," so that when the final certificate was issued, the blanks in this check were filled, and the check filed in its serial number in the proper bundle of "checks to final certificates." In its proper place is found check 13,164. We have had three of these checks photographed for this court in their regular order, all dated December 30, 1835, and numbered 13,163, 13,164 and 13,165. These checks are evidence that patent certificate issued at their date, and show "to" whom, "what for," "area of tract" and "amount of purchase money." Thus, 13,164, issued "to" Thomas Winstanly "for" S. $\frac{1}{2}$ N. E. 3, T. 1, N. 9 W., "containing 84 $\frac{46}{100}$ acres," "at $1.25 per acre, $105.57." (See photograph in record.)

The court certifies that the original checks, photographic copies of which are at page 37 of record, including 13,164, were taken from a bundle of papers belonging to the Edwards-

ville land office, bearing the indorsement as follows: "Checks of final certificates." Now, as all three checks are on the same day and of like purport, we argue that check 13,164 was of the same purport and effect as check 13,163 preceding it, and 13,165 following it. At page 42, printed record, will be found certified copies of the "final certificates" issued upon the entry, 13,163 preceding and 13,165 following Winstanly's, from which the inference is irresistible that a like certificate issued upon 13,164.

This certificate showed that "payment in full, as required by law," had been made by Winstanly, and that he would be entitled to a patent for the S. ½ N. E. qr. 3, T. 1, N. 9 W., on presentation of the certificate to the Commissioner of the General Land Office." This paper from the Register closed the purchase, when in conformity with law he noted the number 13,164 upon the township plat of the land and entered the sale upon his "Tract Book" to Winstanly, as shown on page 36 of record.

This would appear to be all that is necessary to establish Winstanly's purchase of the land in controversy, but for the conflict with the "Receiver's" accounts, as certified.

It is very manifest from all the evidence in the case, Receiver reports, differing from Register's record, that a *mistake* has been made by some one which has led to this suit. Whose is the mistake? Not Winstanly's. His application is all right.

In his "application" he asks to purchase the S. ½ of N. E. qr., S. 3, T. one (1), N. R. No. nine (9), W. 3 P. M., which is the land claimed in this bill. In his application he states that this tract contains eighty-four $\frac{46}{100}$ acres—the true number of acres.

He complies with the law and the instructions of the department, and files at the time of making his application an affidavit. In this affidavit (Erstus) the affiant states that "I personally inspected the tract of land designated *in the annexed application*," "that there was not, at that time (28th December, 1835), any person residing thereon," and "that he did not believe that any pre-emption right exists thereto."

It is true that there is a clerical mistake when the writer attempts to set out under, "viz.," the land applied for, but this mistake could mislead no one, because it referred to a ready way of correction by reference to the tract of land designated in the annexed "application." The "application" and the affidavit constituted but one paper, were filed together and reference to the *application* would have corrected the very evident clerical mistake in the affidavit. The paper that ought to govern in this case is the "application."

It is not denied that at the time Winstanly paid *some* sum of money. The only question is, how much. All Registers' records and final certificate says $105.57. The application is dated the 30th December, 1835. The Receiver's certificate in exhibit shows that on the 30th December, 1835, Winstanly paid the Government one hundred dollars. Can it be believed that this money was not paid on the tract of land he had that day applied to purchase? Can it be believed that he paid this money on a tract of land which the books in the office showed had been sold by the Government as far back as the year 1817?

The subsequent acts of Winstanly and those claiming under him show beyond question what tract he or they believed he had purchased. We find Winstanly two years after, filing his application conveying to Anderson the same

tract of land he had applied for on the 30th December, 1835. This tract was claimed by Winstanly and was occupied for many years by the complainant, who improved it and paid taxes on it.

We therefore submit that there can be no reasonable question that Winstanly *actually* applied for and *intended* to apply for purchase of the tract of land which is claimed in this bill. We have shown that the Register of the land office is the *active* agent of the Government in selling the lands of the Government. The sale is, in fact, made by him and the Receiver takes no part in the selling, nothing in fact but receiving the purchase money—the conclusion of the purchase.

The contemporaneous acts of the Register at the time of selling shows that he then made no mistake. When he made this sale to Winstanly he turned to the tract book, usually lying on the public table in his office, and made the entry on that tract book, as shown by certificate from same, page 36 of record, in complainant's evidence, that he had sold to Winstanly the tract we now claim. That at the same time he made the *check* or *stub*, as shown by record and photographic copy, in complainant's testimony, showing that Winstanly of St. Clair County had paid for S. ½ N. E. ¼, S. 3, T. 1, N. R. No. 9, W., 3d P. M., that it contained $84\frac{46}{100}$ acres and the price was $105.57.

He also made, at the time, the entry in the township plat, as shown in complainant's testimony, and upon which an alteration has been made by some one, as shown in Morrison's deposition.

These acts are all done by the Register in the discharge of his duties as agent, to sell *at the time of the sale*, in books

then in his office, open to the inspection of Winstanly, and as we may fairly suppose in his presence.

All these acts done by Winstanly, and the concurrent acts of the Register, conclusively show that Winstanly applied, paid for and became the purchaser on the 30th of December, 1835, of the S. ½ N. E. ¼ S. 3, T. 1, N. R. 9 W. of 3d P. M., the land claimed in this bill.

These records of the land office at Edwardsville were open to the inspection of Simmons, and were of such a nature that he was bound at his peril to take notice of them.

We assert that all the records in the land office at Edwardsville showed the sale of that land to Winstanly, and that there was nothing at that office to cast the shadow of a doubt upon his title.

The Register and Receiver are required to make quarterly reports to the department at Washington, and defendant offers in evidence, in Exhibit H, certificate from the Department of the Interior, showing that they had reported *a copy* of the final evidence of purchase issued to Winstanly, and a *copy* of the receipt of the Receiver to show that Winstanly had purchased and paid for W. ½ N. W. S. 9, T. 2, N. R. 9 W. of 3d P. M. There is no evidence to show that Winstanly ever had any opportunity to see these copies, and therefore ought not in any way be bound or affected by them.

The mistake in these copies is transparent, and is the mistake of the officers of the Government or their clerk—a mistake which the record would have made apparent if they had examined them.

The application would have showed that Winstanly had applied for the tract now claimed in this bill; that this was confirmed by the entries made by the Register at the time of

the purchase, and would have showed them the tract described in these copies in Receiver's quarterly report of his receipts had been entered in 1817, and that Schlotter was entitled to a patent for it.

It needs no argument or authority to show that this mistake of the officers cannot impair the right of Winstanly acquired by his purchase of December 30, 1835.

From the quarterly reports of the local land officers the records in the Department of the General Land Office is made up. The mistake made in the report of the local officers would therefore be continued in the records of the general department. There would therefore be a conflict between the records of the local office and the general office, and while the local office would show the purchase by Winstanly of S. ½ N. E. ¼ S. 3, T. 1, N. R. 9 W. of 3d P. M., the records of the general office, made up from Receiver's reports, would show that he purchased W. ½ S. W. 9, T. 2, N. R. 9 W., a tract which the government did not own, having been conveyed to Schlotter.

The evidence offered by defendant in this case is all, or nearly all, drawn from the records of the general land office.

These reports of the local officers become the basis on which patents are issued to purchasers, and the mistake shows why a patent was issued to Winstanly for a *tract he never bought*, and sent to land office at Edwardsville, and why the department failed to issue to Winstanly a patent for the *tract he actually bought*.

This same mistake gave the opportunity to Simmons to speculate by buying and acquiring a patent to the lands of Ogle, which he had long owned, improved, paid for, and also

paid taxes on, and had been in possession of nearly thirty years.

The complainant cannot produce the original final certificate of purchase issued to Winstanly. In his deposition he proves that after making search for it he cannot find it. Could he produce the original certificate, and it accorded with the "check" cut off it by the Register and records of the local office it would end this controversy. That a certificate was issued to him the testimony shows conclusively.

That the original certificate, if in our power to produce it, would accord with the local record, with the stub and the application, we think may be fairly inferred from the evidence.

The testimony shows that Winstanly was a fair business man and acquainted with the mode of entering lands. Would it not be strange that such a man would have taken a certificate for a different tract of land than that he had applied for and purchased, and one for a tract of land which the *tract book* and records would have shown had been sold in 1817?

Winstanly, two years after receiving this certificate, sold and conveyed the tract in controversy to Anderson, another fair business man, for $900, printed record, page 45. At this time the certificate of purchase was the only evidence of title which Winstanly could show, except the records of the local office. Can it be believed that Anderson would have paid his money ($900) and received a conveyance for a tract of land conveyed to him when the certificate showed a tract entirely different and distant five or six miles? Would the Cincinnati bank have made a loan and taken a mortgage under such circumstances on the tract in controversy?

The tract of land lies between Belleville and St. Louis, in the coal region not far from East St. Louis, in a densely populated and wealthy neighborhood and where lands are very valuable. If the local records did not show that this land had been entered, why was it not entered long prior to 1870? The only sensible reason is that the local records showed that it had been sold to Winstanly.

Rather would it not be believed in the light of all this evidence furnished by the local office and the action of parties interested in the question that a mistake was made by the local officers or the Receiver, in their report made, perhaps at the end of the next quarter in the *copies* of original certificate and receipt, which they sent to the General Department?

The counsel for defendant argues that Winstanly only paid $100, and therefore could not have bought the tract claimed in the bill containing 104 acres and a fraction.

We reply, that all the records of the *local office* show that the tract he bought contained $84\frac{46}{100}$ acres and that he paid $105.57. Especially is this shown by Register's check or stub. If he did not pay the $105.57, but $100, was not this also a mistake in the officers? The application showed them that it ought to be $105.57. Was it not their fault or mistake if they received less and issued a certificate to Winstanly? There is no proof that Winstanly deceived them; on the contrary, his application showed $105.57, and for 84 acres and a fraction. Will not this court hold, after a lapse of nearly fifty years, that the entry of $100 is a mistake of Receiver rather than of both Winstanly and the agent to sell, the Register.

Counsel for defendant further argues that our "bill is filed

too late," even if the facts are as stated in the bill. That our facts, if true, "would have been a complete defense at law;" in other words, that complainant could have availed himself of the facts we rely on in the ejectment suit in this court, and having neglected to do so, that he was debarred by his laches from asking the aid of a Court of Chancery.

We deny that complainant had an *adequate* and *complete* remedy at law, of which he could have availed himself in that ejectment suit.

We state the law as applicable in this case in the language of Judge Story, in Equity Jurisprudence, section 33, p. 23, Vol. 1, which we quote:

"Sec. 33. Perhaps the most general, if not the most precise, description of a Court of Equity, in the English and American sense, is that it has jurisdiction in cases of rights, recognized and protected by the municipal jurisprudence, where a plain, adequate and complete remedy cannot be had in the courts of common law. The remedy must be plain, for if it be doubtful and obscure at law, equity will assert a jurisdiction. It must be adequate, for if at law, it falls short of what the party is entitled to, that founds a jurisdiction in equity. And it must be complete, that is, it must attain the full end and justice of the case. It must reach the whole mischief and secure the whole right of the party in a perfect manner at the present time, and in the future; otherwise equity will interfere and give such relief and aid, as the exigency of the particular case may require."

That complainant was in the actual possession of it when the equitable case made by the complainant would have been no defense in the ejectment suit in a Federal Court. In

Gibson vs. Chouteau, 13 Wallace, p. 102, Supreme Court United States, say:

"In the Federal Courts, where the distinction between legal and equitable proceedings is strictly maintained and remedies afforded by law and equity are separately pursued, the action of ejectment can only be sustained upon the possession by the plaintiff of the legal title. For the enforcement of equitable rights, however clear, distinct equitable proceedings must be instituted.

"The patent is the instrument which, under the laws of Congress, passes the title of the United States. It is the government conveyance. If other parties possess equities superior to those of the patentee upon which the patent issued, a Court of equity will, upon proper proceedings, enforce such equities by compelling a transfer of the legal title, or enjoining its enforcement, or cancelling the patent. But in the action of ejectment in the Federal Courts, the legal title must prevail, and the patent, when regular on its face, is conclusive evidence of that title."

We now seek in conformity with this clear enunciation of the law, to compel a transfer of the legal title to the superior equity in complainant, and contend that the judgment in ejectment presents no bar to this relief, it only being conclusive as to the legal title, which was all that could have been tried in that suit.

The rule as laid down in the United States Supreme Court, in Marine Ins. Co. of Alexandria vs. Hodyson, 7 Crauch, 332, and quoted with approbation in Owens vs. Ranstead, "that any fact which clearly proves it to be against conscience to execute a judgment, and of which the injured party could

not have availed himself in a court of law, will justify an application to a Court of Chancery."

The Supreme Court of Illinois, in Owens vs. Ranstead, add "and this is the doctrine of all the books, elementary or otherwise; it is the principle universally recognized, and by this court."

Barnes vs. Durham et al., 2 Scam. (Ills.), 58.

Wrench vs. De Zoga, 2 Gill (Ills.), 385.

"If a party sued at law has a defense of an equitable character, but of which a court of law can take cognizance, he need not in general present his equitable defense, but may allow judgment by *default* to be taken against him (just what Ogle did), and may afterwards assert his equitable defense for the purpose of obtaining relief against the judgment. A recovery in an action of ejectment in which nothing but the legal title is in issue, is no bar to any proceedings in chancery founded on the equitable title."

Freeman on Judgments, sec. 501.

"Legal titles only can be tried in the action of ejectment; to adjust equties resort must be had to a Court of Chancery."

Aholtz vs. Zellar, 88 Ills., p. 24.

Johnson vs. Watson, 87 Ills., 535.

"In this action the legal title will prevail against any equity."

Chineguy vs. Catholic Bishop, 41 Ill., 148.

Franklin vs. Palmer, 5 Ill., 202.

Fleming vs. Carter, 70 Ill., 286.

In Martin vs. Dryden, 1 Gill (Ill), page 187, which was a bill filed to remove incumbrances and cloud created by attachment proceedings, exception was taken to jurisdiction, court says:

"By the bill, complainant seeks to remove all liens and incumbrances, if any created by the attachment proceedings, and so to quiet their title by a decree that it is a prior and better equity and legal estate, the court therefore has jurisdiction."

Principle of above cases universally held in Illinois. We claim to have proven that Winstanly, on the 30th December, 1835, bought of the Government, at its local office at Edwardsville, the tract of land in controversy, that he paid for it and that at the date of Simmons' pretended entry, the records of the local land office disclosed to Simmons this purchase and payment; that his pretended purchase alone secured any plausibility, through forgery upon the records. First, "A. P." was erased from the township plat and "13,164" written over it on the W. ½ N. W. 9, 2 N., 9 W., to falsely show that Winstanly entered it. That a similar forgery was committed by erasing "13,164" from the township plat of S. ½ N. E. 3, T. 1, N. 9, W., to falsely, show that Winstanly did not enter it, and substituting the number of Simmons' entry, 29,596, upon it; that the mutilations of the record in Simmons' behalf show conclusively that he had *actual notice* of the prior entry and had to remove the evidence thereof by mutilating the records by himself, his agents or attorneys. That complainant Ogle was in the actual possession of said tract when Simmons, in 1870, procured his patent and had improved it, and had had the possession of it for nearly thirty years and paying all taxes. That the Recorder's office of St. Clair county showed, on its records, repeated conveyances of this land from Winstanly down to complainant. That the records of the Circuit Court of that county showed a decree foreclosing a mortgage on it in favor

of the Commercial Bank of Cincinnati, and its sale by the Master in Chancery (printed record). That these facts affected Simmons with notice of the equity of Ogle, that when he received the title he holds he was, in law, if not in fact, guilty of a fraudulent act, and that equity should treat him as a trustee holding the title for the benefit of Ogle, the equitable owner, and by our bill we pray the court to require Simmons to convey to complainant the title so fraudulently acquired.

Admitting that we could have proved at law, or been permitted to prove, the facts of our case (which we question) and could have defeated the recovery of the possession by Simmons in the ejectment suit, the legal title would have still remained in Simmons, evidenced by a patent from the United States, a continuing cloud upon the title of Ogle and depriving him of the full and perfect use and enjoyment of his right to the land in controversy.

The remedy at law, therefore, was not *plain*, it was not *adequate*, it could not be *complete*, it could not reach the *whole mischief*, it could not secure the right of Ogle in a *perfect manner* at the *present* and *future* time.

We claim that none of the authorities submitted by defendant's counsel dispute but rather conform the view of the law of the case, as we stated. They only go to show the legal proposition, the truth of which we do not dispute, that where a party has a plain and adequate and complete remedy at law, that a Court of Chancery will not take jurisdiction.

We therefore deny that there has been any *laches* on the part of Ogle, which should estop him from the relief he prays for. That the court of law could not give him adequate relief and that an attempt to defend in the ejectment suit

might have imperilled his right to apply to the Court of Chancery for complete relief, and therefore he permitted the ejectment suit to go by default.

We deny that Ogle has slept upon his rights and that he should be *estopped* by the lapse of time in asserting them. He had no official notice of the issue of the patent to Simmons until the trial of the ejectment suit. There is some proof that some one informed him of it in 1872, but it was mere rumor. He had the possession of the land and may have indulged the hope even after the recovery in the ejectment that he would not be evicted from that possession, that Simmons would relent in the prosecution of his unjust and nefariously obtained claim, or that some compromise might be reached by which a tedious and expensive litigation might be avoided, but as soon as he was disappointed in this hope and was evicted and deprived of the possession, he filed his bill in this case. We deny, therefore, that this delay was unreasonable or that he ought to be estopped on that account from having the relief prayed for in this bill.

In examining the record, it will be seen that the affidavit accompanying the "application" of Winstanly is printed at page 50, where there is no "application" to which it refers. This is a clerical mistake; the affidavit is a part of the application and should appear in the record after the "application" at page 34 of the record, where it is an intelligible part of the initiatory proceedings on the part of Winstanly to buy the land.

If, as we contend, the "Register's check" show the issuing of a "final certificate" for S. ½ N. E. 3, T. 1, N. 9, W., which, in view of the "application" entry on the "Tract Book" and entry on the "Township plat," all made by the

Register, confirmed by Winstanly claiming the land and disclaiming (as shown by Beauman's deposition) title to the W. ½ N. W. 9, 2 N., 9 W., though this latter tract was the most valuable, and that, as is shown in defendant's testimony, a final certificate upon the same entry issued for W. ½ N. W. 9, 2 N., 9 W., it only goes more conclusively to show mistakes of the agents of the Government and not of Winstanly. The transaction is nearly a half century old, and if, at this late date, the defendant's theory is correct, Winstanly paid the Government $5.57 too little for S. ½ N. E. 3, 1 N. 9 W., but paid it $100 too much for W. ½ N. W. 9, 1 N., 9 W., which it could not sell.

In the midst of this confusion created by land officers, and intensified by malicious, corrupt mutilations of the records in the interest of Simmons, he is allowed to come in and for a hundred dollars take property stipulated to be worth over $5,000, possessed by Ogle for over thirty years, and made valuable by his labor and improvements. In its essential elements, no case ever presented a clearer claim to equitable relief. Simmons, a Philadelphia adventurer, no doubt posted by one of the infernal ring who have so persistently invaded our civil life, is advised of this chance of a speculation, and pounces, under the forms of office, upon Ogle's land. Are we not justified in this suspicion? XI Otto, Simmons vs. Wagner shows a like case; several are now pending for Simmons' entries, made about the same time, 1870 and 1871, in the Supreme Court of Illinois. Sales of the public lands were closed in Illinois many years ago, all books transferred to the continued office at Springfield. In the Interior department, the accounts of all sales are being closed, mistakes are discovered, conflicts in the records creat-

ing doubts as to whether certain tracts were entered as they were claimed. Instead of the officers of the General Land Office communicating with the local office at Springfield to make inquiry in the neighborhood of the land that the equitable owner might correct the mistake, if any was made, they communicate their valuable information to a Philadelphia merchant, always "Wm. H. Simmons," who, through their instrumentality, has been allowed to dot Illinois all over with his piracies.

Of course, the record shows no complicity with land office clerks, or others in the office, but how else, I ask this Honorable Court, in all the candor of honest conviction, could he have obtained his information?

JAS. L. D. MORRISON,
Solicitor for Complainant.